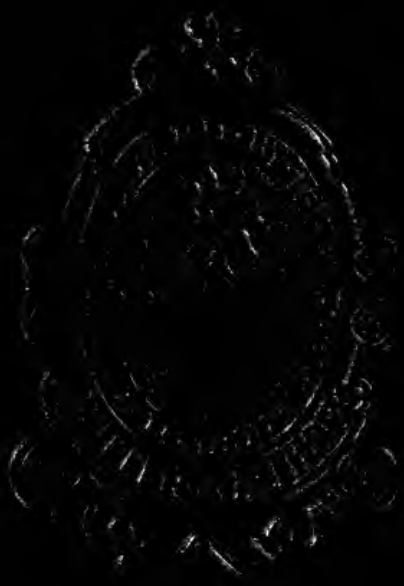

THE

PRIVATE STREET WORKS ACT, 1892

BEING

A PRACTICAL GUIDE TO THE WORKING OF THE ACT. WITH ALL NECESSARY FORMS AND PRECEDENTS

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PREFACE.

In view of the wide powers conferred by the Private Street Works Act, 1892, and of the extent to which sanitary authorities have already availed themselves of such powers, it is somewhat surprising to find that there is in existence no work dealing fully and exclusively with the provisions of the Act.

The bulky and expensive treatises on Public Health Law in general include, of course, some reference to this statute, as one of the many which have been from time to time passed for the amendment and extension of the principal Act of 1875. In none of them, however, has the subject received the full consideration which, in the judgment of the Authors, its importance deserves. Moreover, such treatises are inaccessible to many persons officially concerned in the practical working of the Act, or (as owners of property) pecuniarily interested in its operation.

The present work is an attempt to supply a practical and self-contained manual for the use primarily of those members of the legal profession who may be called upon to consider the subject, and of clerks to the various local authorities, who may have to advise their boards as to the desirability of proceding under the Act, and as to the procedure to be followed in subsequently putting it into effect. The Authors venture to hope,

however, that it may also be found intelligible by laymen, interested in property as owners or agents, who may desire to understand their own rights, and the powers of a local authority, and, possibly, to oppose proposals for private street improvements.

The importance of the Act, and the number of local authorities already working under it, may be judged from the following facts:—In their circular letter to local authorities, dated 31st January, 1893, the Local Government Board, after discussing its provisions, concluded thus: "It will be seen that in several important particulars the provisions of the new Act differ very materially from those of the Acts of 1875 and 1890, which, when the Act is adopted, it will supersede; and the Board may suggest that the sanitary authority should consider whether it might not be advantageous that they should adopt the Act, and thus secure the additional powers which its adoption would confer upon them." Between that date and March, 1902, 437 urban district councils adopted the Act, and 156 Orders were issued empowering rural district councils to avail themselves of its provisions. During the years 1898—1901 a sum averaging no less than $1\frac{1}{4}$ millions of pounds per annum was spent on private street and other similar improvements, exclusive of sums repaid in respect of loans and interest on loans.

A perusal of the Table of Contents will enable the reader to understand the method in which the Authors have attempted to deal with their subject. In the Appendix will be found a full collection of Forms and Precedents, together with a copy of the Act. Relevant

sections of other statutes have also been set out *verbatim*, either in the Appendix, or in their appropriate context in the body of the work.

The Authors will be obliged to any gentleman who will send them a note of any error, or suggestions for a future edition.

J. S.
G. R. H.

1, KING'S BENCH WALK, E.C.
July, 1902.

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THE PRIVATE STREET WORKS ACT, 1892.

CHAPTER I.

THE OBJECT AND SCOPE OF THE ACT, AND ITS ADVANTAGES OVER PREVIOUS LEGISLATION ON THE SUBJECT.

Need for legislation on the subject.

The Private Street Works Act, 1892 (55 & 56 Vict. c. 57), is the latest attempt of the Legislature to solve one of those problems connected with Public Health and Sanitation, to which the rapid growth of urban communities during the last century has compelled attention.

Throughout the country, villages have developed, and are still developing, with a mushroom-like rapidity of growth into populous manufacturing towns; and, in the great majority of such cases, the new population has been housed, not along the old highways, but in new streets laid out by the owners of land with the intention of converting their property into remunerative building estates. The result was, and to a certain extent (in spite of building bye-laws) still is, inevitable. The original owner, or the speculative builder (as the case may be), being chiefly concerned to secure the greatest possible return in the shape of rents with the least possible outlay, has in too many instances contented

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himself with crowding into his property the maximum number of dwellings, regardless of the sanitary requirements of his tenants and the condition of the streets so formed.

The evil consequences of such a state of affairs, and its injurious effects upon the health of the poorer classes (who were mainly, but by no means exclusively, affected by it), was brought to the notice of Parliament in 1848; and the Public Health Act of that year contained a section enabling the Local Board of Health to charge the owners of premises fronting upon any street, "not being a highway," with the cost of properly sewering, levelling, paving, flagging, and channelling such street—the intention being to bring home to owners their responsibilities towards the tenants from whom they derived their income. Four years later these powers were extended by being made applicable to any street, "not being a highway repairable by the inhabitants at large," and again in 1875 by the inclusion of the word "lighting."

Public Health Act, 1848, s. 69.

Public Health Supplemental Act, 1852, s. 13.

Public Health Act, 1875, s. 150.

Reference has been made above to the building bye-laws, which are now in operation in almost all urban, and many rural, sanitary districts: it might be thought that such bye-laws, if carefully framed and enforced, would dispense with the necessity for the statutory powers of compulsory paving, etc., with which we are now concerned. Such, however, is not the case;—in the first place, many rural sanitary districts have, or until a recent date had, no bye-laws in force; secondly, even in sanitary districts (both urban and rural) which have bye-laws, the development of a mere occupation lane into a "street" has often been very gradual, with the result that in the early stages of such development the authority, not realising that a new "street" was in process of formation, has omitted to insist upon work, which subsequent development has shown to be necessary; lastly, bye-laws make no provision for maintenance; and, though sewers once made—to the satisfaction

Building bye-laws alone not sufficient:

their deficiencies.

of the local authority—are thenceforth repairable by the public, the statutes, which we are now considering, enable an authority to charge upon the owners the cost, not merely of "making up" a road, but also of maintaining it until it is formally adopted as a public highway.

Public Health Act, 1875, ss. 150—152;

Returning now to the Public Health Act, 1875, we find that ss. 150—152 (as amended by s. 41 of the Public Health Acts Amendment Act, 1890, in those districts where the third part of that Act has been adopted), contain a complete code of provisions defining the powers of a sanitary authority (*a*) in respect of private street works (*b*), and prescribing the procedure to be adopted: these provisions are (in general) still operative, and a local authority may, if it thinks fit, proceed under them; but they no longer apply to any district in which the Private Street Works Act is in force (*c*). Consequently an authority, which is contemplating the execution of private street works, must first consider carefully under which statute it will proceed; and it is therefore proposed to briefly contrast the provisions of the two Acts, and explain the object of the Legislature in passing the later one.

defects in these sections:

During the years 1875—1892 defects were found to exist in the working of the above-mentioned sections of the Public Health Act, which gave rise to a large quantity of litigation, and led local authorities to spend considerable sums of money which they eventually failed to recover from the property owners. In consequence of such defects in the existing general law, it became

(*a*) Throughout this work the words "authority" and "local authority" are used as denoting the sanitary authority of the particular district within the meaning of the Public Health and Local Government Acts.

(*b*) This convenient term is used for the sake of brevity, as including any or all of the street works which may be carried out at the owners' expense, either under the Public Health Act, or under the Private Street Works Act.

(*c*) Section 25. Apparently an adoption of the later Act is an irrevocable step.

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not unusual for boroughs to obtain private Acts of Parliament enabling them to adopt a better and more economical mode of procedure; and ultimately in 1892 the present statute was passed, modelled largely upon such private Acts, with the intention of providing an alternative code upon the subject for the benefit of authorities who might choose to work under it in preference to that contained in the previous Public Health Acts.

The chief and glaring defect in the older enactments was that the various owners had no means of contesting the proposals of the authority until the works had been completed: the result was that the authority, after having expended a large sum of money, might at the last moment be met by some fatal objection (*e.g.*, that the street in question was a highway repairable by the inhabitants at large), and might in consequence fail to recover a single penny of the expense incurred by them.

how far met by the Private Street Works Act, 1892.

The present Act provides for the raising and determination of objections at the outset (s. 7); therefore, if ordinary care be exercised in giving the required notices, there is little danger of the authority finding itself saddled with any unforeseen expense (see pp. 67, 68).

Further advantages of the later Act.

New provisions are also inserted in the Private Street Works Act which enable the local authority to themselves contribute to the expenses of the works (s. 15), to recover apportioned expenses by action at any time within six years (s. 14), to secure uniformity as regards drainage, level, etc., between the various streets of a town (s. 9), and also (where desirable) to take into account in making their apportionment the varying amount of benefit derived by the respective premises (s. 10). Moreover, their powers as to "taking over" streets are more extensive under the later statute (ss. 19, 20). Apparently the only sections which place a local authority in a worse position than they would be under the Public Health Act are s. 7 (d), which allows the justices to

consider the sufficiency and reasonableness of the proposed works and the estimated costs, and s. 16, which, whilst repeating the exemption of incumbents and ministers in respect of churches, chapels, etc., conferred by s. 151 of the Act of 1875, extends such exemption to trustees of such places, and further provides that the local authority shall bear the share of the property so exempted. There is also a provision (s. 22) exempting railway and canal companies from liability in certain cases; but, as the cost of this exemption is directed to be borne by the other owners, the authority itself is not affected thereby: this section, however (see pp. 52, 53), appears likely to press most unfairly upon the other owners, and, in cases in which it would apply, it may be a matter for the consideration of the authority whether they should not proceed under the Public Health Act for the express purpose of bringing the company within their net.

Under either statute (s. 18) the cost of private street works may be spread over a number of years by means of a loan raised with the sanction of the Local Government Board; and under either statute (s. 13) the share of the cost apportioned on any premises becomes a charge upon such premises; the Private Street Works Act, however, dispenses with the necessity for an action to enforce such charge, and gives the authority the powers of mortgagees under the Conveyancing Act.

Comparative advantages of the two codes.

The result of the foregoing comparison appears to be that a local authority will as a rule be well advised to proceed under the later statute, and not under the corresponding sections of the Public Health Acts.

In the following chapters the provisions of the Private Street Works Act are dealt with in detail in accordance with the scheme of arrangement set out in the Table of Contents. The attention of the reader is here drawn generally to the following facts:—the Act is to be construed as one with the Public Health Acts (s. 1); it

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is, as regards urban districts, adoptive only, and as regards rural districts can only be applied by an order of the Local Government Board (ss. 2—4); where in force it excludes the corresponding portions of the Public Health Acts (*e*) (s. 25); but otherwise the powers conferred by it are cumulative, and additional to those conferred by local Acts (s. 24).

(*e*) Its adoption does not, however, invalidate a notice previously given under s. 150: *Heston and Isleworth Urban Council* v. *Grout* (1897), 2 Ch. 306; 66 L. J. Ch. 647; 77 L. T. 118; 45 W. R. 697; affirming 61 J. P. 454.

CHAPTER II.

WHAT AUTHORITIES MAY TAKE ADVANTAGE OF THE ACT.

THE Private Street Works Act applies only to England (*a*) (including, of course, Wales, and the town of Berwick-upon-Tweed) (*b*). As pointed out in the preceding chapter, it is adoptive, or applicable by order of the Local Government Board, according as the district is urban or rural; and the earlier sections prescribe the conditions upon compliance with which a local authority may take advantage of its provisions. The requirements differ according as the authority is an urban or rural district council (within the meaning of the Public Health and Local Government Acts).

Adoption by urban district councils.

1. An Urban District Council.—The method of adoption and procedure are laid down in ss. 2 and 3: the former provides that—

> "This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act."

The adoption of the Act is therefore a question of expediency to be decided by the authority itself, and it is carried out by means of a formal resolution.

The following provisions as to notices, meetings, and publication must be complied with:—

(i.) Section 3 (1)—

Notice of meeting.

> "The adoption shall be by a resolution passed at a meeting of the urban authority; and one calendar month at least before such meeting

(*a*) Section 1.

(*b*) 20 Geo. 2, c. 42, s. 3.

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special notice (*c*) of the meeting, and of the intention to propose such resolution, shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it if it is either—

(a) Given in the mode in which notices to attend meetings of the authority are usually given; or

(b) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid registered letter, addressed to the member at his usual or last known place of abode in England."

Procedure at meeting.

(ii.) In passing the resolution, regard must be had to the standing orders (if any) of the authority, and to the statutory rules governing their proceedings: the latter are to be found in Schedule I. of the Public Health Act, 1875, in the case of an urban or rural district council, and in the Municipal Corporations Act, 1882, s. 22 and Schedule II. in the case of a borough council.

Publication of resolution.

(iii.) The resolution having been duly passed it must be published in the manner prescribed by s. 3 (2):—

"Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors (*d*) of every church and chapel (*e*) in the place

(*c*) To enable this notice to be given, some member must first give to the clerk notice of his intention to move the adoption of the Act, and in giving such notice of motion regard must be had to the standing orders, or regulations, of the council.

(*d*) Publication on a proper notice board at, or near, the door would appear to be sufficient: *Empson* v. *Metropolitan Board of Works* (1861), 25 J. P. 677; 3 L. T. 624.

(*e*) If it be the local custom to post notices on the doors of Nonconformist chapels, the usual practice must be followed, although as a general rule the words "church or chapel" may be taken as including only those of the Church of England.

to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested."

And by s. 3 (3) :—

"A copy of the resolution shall be sent to the Local Government Board."

The foregoing requirements having been complied with, the resolution becomes operative at such time, not less than one month after the first publication of the advertisement, as may have been fixed by the resolution; and thereupon the Act comes into force within the district of the authority (s. 3 (2)).

Evidence of adoption.

With regard to the formalities required, two points must be noticed; by s. 3 (4) :—

(a) "A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown."

(b) "No objection to the effect of the resolution on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement."

Application to rural districts.

2. **A Rural District Council.**—Such an authority cannot merely by resolution adopt the Act; but by s. 4 :—

"The Local Government Board may declare that the provisions contained in this Act shall be in force in any rural sanitary district, or any part thereof, and may invest a rural sanitary authority with the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of this Act, in like manner and subject to the same provisions as they are enabled to invest rural sanitary authorities with

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the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875."

Procedure.

The course to be adopted when a rural authority desire the Local Government Board to confer on them the powers given by the Act is as follows. Some member of the council must give to the clerk notice of his intention to move that application be made to the Local Government Board to put the Act into operation, specifying what particular street, or streets, or part of a street, or streets, the notice of motion refers to. When giving such notice of motion regard must be had to any standing orders, or regulations, which may have been made by the council in pursuance of Schedule I. of the Public Health Act, 1875, for by s. 59 of the Local Government Act, 1894, the rules contained in such schedule are made applicable to rural district councils.

If the council pass the resolution the application will be made to the Local Government Board in the ordinary manner by letter forwarding a copy of the resolution.

The Local Government Board are to exercise the powers conferred on them by this section "in like manner and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities, under the provisions of s. 276 of the Public Health Act, 1875." By this section (see p. 135) the powers in question may be granted "by order, to be published in the *London Gazette*, or in such other manner as the Local Government Board may direct," upon the application of—

(a) "The authority of any rural district;" or,

(b) "Persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district, or of any contributory place therein."

In practice the application will almost invariably be made by the authority.

The section provides that "the provisions" of the Act may be declared to be in force in any "rural sanitary district, or part thereof:" as a rule, however, the Local Government Board do not give a general authority to a rural district council to put the Act in force in the whole of the district, but confine their order to one or more specified streets (*f*) (or parts thereof). It is also their practice in many cases to declare only certain portions of the Act to be in force; thus, a rural district council may be invested only with the powers conferred by s. 19 as to some particular street, which they are thereby enabled to adopt as a highway repairable by the inhabitants at large (see as to this power chapter VII., *post*); and in the majority of cases the provisions with regard to "sewering" are specially excepted from the order declaring the Act to be in force.

(*f*) Such an order is not in any way conclusive that the way named in it is in fact a "street" within the meaning of the Act: *Fenwick* v. *Croydon Rural Sanitary Authority* (1891), 2 Q. B. 216; 60 L. J. M. C. 161; 40 W. R. 124; 55 J. P. 470.

CHAPTER III.

POWERS CONFERRED BY THE PRIVATE STREET WORKS ACT.

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2.	*What work they may do* - - - - - -	46
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THE gist of the statute is contained in s. 6 (1) which provides that :—

> " Where any street or part of a street is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority, the urban authority may from time to time resolve with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works) ; that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street ; and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street. Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street."

The various words and expressions used in this section must be carefully considered in detail ; and the first point to determine is the meaning of the word " street."

What is a " street " ?

The interpretation section (s. 5) enacts that—

" The expression ' street ' means (unless the context

otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large."

The only definition of street contained in the Public Health Acts is to be found in s. 4 of the Public Health Act, 1875, and is to the following effect:—

"In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them; that is to say—'Street' includes any highway (*not being a turnpike road*), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not."

The use in this definition of "includes" (not "means") gave rise to a good deal of litigation, for the word "street" is used in the Public Health Act in a variety of contexts, to some of which the ordinary and popular sense of the word is more appropriate than the extended sense; and Lord SELBORNE laid down (*a*) that such an interpretation clause does not prevent the word "street" receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but is meant to enable the word, as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable; that the meaning of this portion of the interpretation clause was that the provisions contained in the Act as to streets (new or old) should, unless there is something in the subject-matter and the context to the contrary, be read as applicable to these different things. It being therefore settled that the word "street" may have either of two meanings in the Public Health Act, the courts were from time to time engaged in determining

(*a*) *Robinson* v. *Barton Local Board* (1883), 8 A. C. 798; 53 L. J. Ch. 226; 50 L. T. 57; 32 W. R. 249; 48 J. P. 276.

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whether in s. 150 it was used in its ordinary and popular sense, or in the extended sense contemplated by s. 4.

After considerable fluctuations of opinion (*b*) it was eventually held (*c*), and may now be regarded as settled law (*d*), that the extended sense of the word is the one applicable in s. 150; and there can be no doubt that the same meaning is to be given to it in the present statute.

It includes private streets, alleys, &c.

How wide that meaning is will be judged from an examination of a few decisions. In *Taylor* v. *Corporation of Oldham* (*e*), JESSEL, M.R., pointed out that the word "street" clearly extends to places which are in all respects private, and over which the public have no right; and in the course of the case, his lordship made some observations on the Public Health Act which are well worthy of perusal:—"What is the Act for? It is a public health Act. The owners of these private courts and alleys are, of all people in the world, the most averse to laying out money in sanitary works. It is in these places that the poor live, the very people who suffer most from the want of sewerage and drainage, which are so requisite for public health. Is it to be imagined that the Legislature intended to except such places as these from the operation of the Act? I should say, if the Act were passed for anybody, it must have been meant to include these owners, who, for the sake of gain and acquiring high rents in proportion to the annual value of the wretched tenements they allow the poor to occupy, neglect ordinary and necessary sanitary precautions. If I were to interpret it by what I might think to be the mind of the Legislature, I should suppose that the first

(*b*) See *Maude* v. *Baildon Local Board* (1883), 10 Q. B. D. 394; 48 L. T. 874; 47 J. P. 644; *R.* v. *Burnup* (1886), 50 J. P. 598.

(*c*) *Jowett* v. *Idle Local Board* (1888), 57 L. T. 928; 36 W. R. 138, 530.

(*d*) *Fenwick* v. *Croydon Rural Sanitary Authority* (1891), 2 Q. B. 216; 60 L. J. M. C. 161; 65 L. T. 645; 40 W. R. 124; 55 J. P. 470; 7 T. L. R. 594; following the last case and *Richards* v. *Kessick* (1888), 52 J. P. 756; 57 L. J. M. C. 48; 59 L. T. 318, and reviewing all the earlier cases.

(*e*) (1876), 4 C. D. 395; 46 L. J. Ch. 105; 35 L. T. 696; 25 W. R. 178.

people to be included would be the owners of these crowded courts and alleys, over which the public have no strict rights whatever, but which are intended to be used for the dwellings of the poor, and are unprovided with what, according to modern science, is known to be absolutely necessary for their well-being."

In one case, where an owner of the soil of a road put up a bar at either end of it, and took tolls from persons using it, it was held that the road might yet be a "street" (*f*). Again, if a strip of land be thrown open and added to an old highway repairable by the inhabitants at large, the justices may hold the added strip to be a street within the meaning of the Act, and this although the particular old highway is within the jurisdiction of another local authority (*g*).

In its original form, the incorporated definition of the word "street" was cut down by two provisoes: "not being a turnpike road," and "not being a highway repairable by the inhabitants at large."

The first exception was repealed (as obsolete) by 61 & 62 Vict. c. 22. A turnpike road meant a road which was the subject of a turnpike Act (*f*).

What is a highway repairable by the inhabitants at large?

The second must be considered carefully and at some length, partly on account of its difficulty, and partly because the objection most frequently taken to proposals of a local authority in regard to private street works is, that the street in question is a highway repairable by the inhabitants at large. The subject may be divided under three heads:—

(1) What is a highway?

(2) How may a highway be created?

(*f*) *Midland Rail. Co.* v. *Watton* (1886), 17 Q. B. D. 30; 55 L. J. M. C. 99; 55 L. T. 482; 50 J. P. 405; 34 W. R. 524.

(*g*) *Richards* v. *Kessick* (1888), 52 J. P. 756; 55 L. J. M. C. 48; 59 L. T. 318.

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(3) When is a highway repairable by the inhabitants at large?

I. WHAT IS A HIGHWAY?

i.) What is a highway?

A highway is a road over which the public at large have a right of passage. It may be—

Kinds of highway.

A footway only, *i.e.*, a right of passage for pedestrians.

A pack and prime and drift way, frequently called a bridle way, *i.e.*, a right of passage both for horses and cattle and pedestrians.

A cart or carriage way, *i.e.*, a right of passage for all purposes.

Need not be a thoroughfare.

It need not, in every case, be a thoroughfare, for, as was pointed out by Lord CAMPBELL, C.J., "There may be a large square with only one entrance to it, and if the owner allows the public to use it without restriction for a great many years, he cannot afterwards turn round and say they were all trespassers" (*h*); and MALINS, V.-C., speaking of a *cul-de-sac* consisting of a road running between two rows of houses, said—"These houses have been built more than twenty years, and the passage has been left open to the public, who have been allowed to enter night and day, whenever they thought fit. That amounts to a dedication to the public, and it makes a way or street so opened a public one" (*i*). Possibly this statement of the law should be slightly qualified in view of the following passage from a judgment of KAY, J. (which however appears to stand alone):—"But it is argued that a *cul-de-sac* may be a highway. That is so in a street in a town into which houses open and which is repaired, sewered, and lighted by the public authority

(*h*) *Bateman* v. *Bluck* (1852), 21 L. J. Q. B. at p. 409; 18 Q. B. 870.

(*i*) *Souch* v. *East London Rail. Co.* (1873), 16 Eq. at p. 109; 42 L. J. Ch. 477; 21 W. R. 590; 37 J. P. 644. See also *Vernon* v. *Vestry of St. James, Westminster* (1880), 16 Ch. D. 449; 50 L. J. Ch. 81; 44 L. T. 229, where the same learned judge reviewed all the previous cases and re-affirmed the above principle; see also the Scotch cases, *Campbell* v. *Lang and Others*, 1 Macq. 451, and *Young* v. *Cuthbertson*, 1 Macq. 455.

at the expense of the public, . . . but I am not aware that this law has ever been applied to a long tract of land in the country on which public money has never been expended" (*j*).

II. How a Highway may be Created.

(ii.) How a highway may be created.

A highway may be created either—

A. By prescription.

B. By dedication and user.

C. By or under power contained in an Act of Parliament.

A. Prescription.

This mode of creating a highway is of little importance for the reasons stated in the following extract from a judgment of Lord Blackburn, to which it is unnecessary to add anything for the purpose of the present work:—"A right of public way may be acquired by prescription . . . the common law period of prescription was time immemorial, and any claim by prescription was defeated by proof that the right claimed had originated within the time of legal memory, that is, since A.D. 1189. This was, no doubt, an unreasonably long period. And sometimes by legal fictions of presumed grants, and in part by legislation, the period required for prescription as to private rights has, in many cases, been practically cut down to a much shorter definite period (see *Angus* v. *Dalton*) (*k*).

"But this has never been done in the case of a public right of way. And it has not been required, though in the way in which the evil of the period of prescription being too long has been avoided, an opposite evil of establishing public rights of way on a very short usurpation has sometimes been incurred.

"In *Poole* v. *Huskinson* (*l*) Baron Parke says: 'In

(*j*) In *Bourke* v. *Davis* (1889), 44 Ch. D. 122; 62 L. T. 34; 38 W. R. 167.

(*k*) (1881), 6 App. Cas. 740, at p. 750; 50 L. J. Q. B. 689; 44 L. T. 484; 30 W. R. 191; 46 J. P. 132.

(*l*) (1843), 11 M. & W. 830.

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order to constitute a valid dedication to the public of a highway by the owner of the soil, it is clearly settled that there must be an intention to dedicate—there must be an *animus dedicandi*, of which the user by the public is *evidence*, and no more; and a single act of interruption by the owner is of much *more* weight upon a question of intention than many acts of enjoyment.'

"But it has also been held that where there has been evidence of a user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief, it is not conclusive evidence, but evidence on which those who have to find the fact may find that there was a dedication by the owner, whoever he was. It is therefore, I may say, . . . never practically necessary to rely on prescription to establish a public way" (*m*).

B. Dedication and user.

We now come to the second and (for the present purpose) most important mode in which a highway may be created—viz., dedication and user.

(i.) Dedication

A correct idea of the meaning of the word "dedication" may be gathered from the words of Lord BLACKBURN, quoted above, and from other judgments dealing with the question. When an owner in fee (*n*) of land gives permission to the public to use it as a highway, and the public do so use it, the land is dedicated and becomes a highway; and, where there is evidence that a road has been for several years actually used by the public, a dedication may be inferred from such user, and it is for a jury, or magistrates, to say whether they draw such inference, and at what time and by whom such dedication was made (*o*).

is a question of fact.

Whether a piece of ground has, or has not, been

(*m*) *Mann* v. *Brodie* (1885), 10 App. Cas. at pp. 385, 386.

(*n*) As to who can dedicate, see *post*, p. 25.

(*o*) *R.* v. *Petrie* (1855), 4 E. & B. at p. 743.

dedicated as a highway, is a question of fact. In determining this question no difficulty can well arise where there has been an express dedication, *e.g.*, by deed. In the majority of cases, however, the dedication is implied, *i.e.*, is to be inferred as a fact from other facts proved in evidence.

Evidence as to dedication.

It is proposed to first indicate some heads of evidence most frequently relied on as (1) warranting a presumption of dedication, (2) tending to rebut such presumption, and then to quote extracts from a few decisions as to the proper value to be attached to such evidence.

(1) IN FAVOUR OF DEDICATION.

(a) Uninterrupted user of a way, openly and as of right, for a considerable period, by all persons without distinction.

(b) Repairs to a way by a parish.

(c) Reputation, *i.e.*, evidence of witnesses who have heard deceased persons make statements as to a way.

(d) Public lighting of a way; but this is of less importance now that authorities have in many cases power to light private ways, *e.g.*, under s. 161 of the Public Health Act.

(e) The existence of stiles in a footway.

(2) AGAINST DEDICATION.

(a) Absence of repair of a way by the parish.

(b) Repairs by the owner of the soil.

(c) The placing of a bar or gate across the way by the owner.

(d) Protests and the turning back of people who have attempted to use the way.

(e) Notice-boards cautioning people against using the way.

(f) A user under agreement or license.

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User.

In *R.* v. *Petrie* (*p*) Wightman, J., said, "Now I think that user by the public for a sufficient length of time, as of right and openly, of an easement over land, is evidence from which assent on the part of the owner, whoever he may be, is *primâ facie* to be inferred. There is a public right inferred to exist from the public user; and it is not necessary, for a *primâ facie* case, to inquire into the state of the title at the time." Crompton, J., in the same case said (*q*), "There is evidence . . . of user sufficient to raise an inference of a dedication. I take it that, when such user is proved, the onus lies on the person who seeks to deny the inference from such user to show negatively that the state of the title was such that that dedication was impossible, and that no one capable of dedicating existed" (*r*).

In another case (*s*) Lord Ellenborough said, "I think that if places are lighted by public bodies, this is strong evidence of the public having a right of way over them. . . . If the owner of the soil throws open a passage, and neither marks by any visible distinction that he means to preserve all his rights over it, nor excludes persons from passing through it by positive prohibition, he shall be presumed to have dedicated it to the public. Although the passage in question was originally intended only for private convenience, the public are not now to be excluded from it after being allowed to use it so long without any interruption."

So, too, Lord Blackburn said (*t*), "It is necessary to show, in order that there may be a right of way established, that it has been used openly as of right, and for so long a time that it must have come to the knowledge of the owners of the fee that the public were so

(*p*) (1855), 4 E. & B. at p. 747.

(*q*) At p. 749.

(*r*) As to this, see p. 26, *post*.

(*s*) *R.* v. *Lloyd* (1808), 1 Camp. 260.

(*t*) *Greenwich Board of Works* v. *Maudsley* (1870), L. R. 5 Q. B. at p. 404; 39 L. J. Q. B. 205; 23 L. T. 121; 18 W. R. 948.

using it as of right, and from this apparent acquiescence of the owners a jury might fairly draw the inference that they chose to consent, in which case there would be a dedication."

The following *dictum* of Cozens-Hardy, J. (*u*), is also worthy of notice:—"In my judgment, user by the public over land belonging to a non-resident owner is less cogent evidence of dedication than where the user is necessarily brought to his personal notice; and, further, the weight to be attached to user must depend somewhat upon the nature of the land itself, whether it is cultivated land or rough and unproductive land."

Repairs, etc.

The fact that cleaning and repairing have, or have not, been done by the public, or by the landowner, is *some* evidence on the question of dedication; see *per* Lord Denman, C.J., "The fact of no repairs having been ever known to be done to the road by the parish is a circumstance from which you may infer that it is not a public road, as the parish is bound to repair all public roads" (*x*); and *per* Lord Ellenborough, "Repairs done by an individual are *primâ facie* rather to be ascribed to motives of private interest in his own property, than as done for the public benefit" (*y*). The value of such evidence depends entirely upon the facts of each case; it is always open to the parties to show that the repairs, etc., were done under circumstances raising no presumption as to the road or path being a highway or not (*z*). An individual may frequently for his own convenience do slight repairs to a road or path near his house or land, whilst recognising it to be a highway repairable by the public (*a*); and on the other hand there may be

(*u*) *Chinnock* v. *Hartley Witney Rural District Council* (1899), 63 J. P. 327.

(*x*) *Davies* v. *Stephens* (1836), 7 C. & P. 571.

(*y*) *R.* v. *Northamptonshire* (1814), 2 M. & S. 264.

(*z*) *Piggott* v. *Goldstraw* (1901), 84 L. T. 94; 65 J. P. 259; *Chinnock* v. *Hartley Witney*, *supra*.

(*a*) *Rundle* v. *Hearle* (1898), 2 Q. B. 83; 67 L. J. Q. B. 741; 78 L. T. 561; 46 W. R. 619.

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some good reason to account for a public authority repairing a road which is private property (*b*); still, in the absence of explanation, evidence as to repair is at any rate of some value in cases of disputed dedication.

Reputation.

Evidence of reputation was admitted in *Barraclough* v. *Johnson* (*c*). There, on an issue whether or not certain land, in a district repairing its own roads, was a common highway, it was held that it was admissible evidence of reputation (though slight) that the inhabitants held a public meeting to consider the repairing of such way, and that several of them, since dead, signed a paper on that occasion, stating that the land was not a public highway, *there being at the time no litigation on the subject.* It was in this case further held that in determining whether or not a way has been dedicated to the public, the proprietor's intention must be considered. If it appear only that he has suffered a continual user, that may prove a dedication; but such proof may be rebutted by evidence of acts showing that he contemplated only a license revocable in a particular event. On the question of highway or not, proof of an indictment against an adjoining township, either submitted to or prosecuted to conviction, for non-repair of a portion of highway in continuation of the way in question was held to be admissible evidence (*d*).

Notices, bars, gates, etc.

The following cases deal more particularly with the effect of notices and obstructions: in *Poole* v. *Huskinson* (*e*) Lord ABINGER said, "The user by the public with carriages since the award is no doubt evidence of a dedication by the owner to the public; and the notices which were fixed on posts, and which may be presumed to have been done with the consent of the owner of the

(*b*) *R.* v. *Hawkhurst* (1862), 7 L. T. (N.S.) 268; 26 J. P. 724; 11 W. R. 9.

(*c*) (1838), 8 A. & E. 99. Other cases on this subject will be found at p. 350 of Sm. L. C., vol. 2 (10th ed.).

(*d*) *R.* v. *Brightside Bierlow* (1849), 13 Q. B. 933.

(*e*) (1843), 11 M. & W. 827, 830.

soil, are strong evidence to the contrary. The interruptions also by the overseers who had the herbage are very material in the case." And in the same case Parke, B., when pointing out that there must be an intention to dedicate, of which the user by the public is *evidence*, and no more, said "a single act of interruption by the owner is of much more weight, upon a question of intention, than many acts of enjoyment."

In *Roberts* v. *Karr* (1808), 1 Camp. 262, it appeared that some years previously a street was made over the *locus in quo*, which had been before an inclosed field; that soon after the houses were finished a bar was placed across the street to prevent carriages from passing through it; but that the bar was soon knocked down, since which time it had been used as a thoroughfare. On the part of the defendant it was contended that this amounted to a dedication to the public, at least as a footpath. But Heath, J., observed that the pulling up of a bar rebutted the presumption of a dedication to the public. Such a dedication must be made openly and with a deliberate purpose.

In *Lethbridge* v. *Winter* (1808), 1 Camp. 263, a gate (the pulling down of which was the trespass complained of) was put up in a place where a similar gate had formerly stood, but where for the last twelve years there had been none. It was thereupon contended for the defendant, that from suffering the gate to be down so long and permitting the public to use the way without obstruction for so many years, the plaintiff and those under whom he claimed must be considered as having completely dedicated the way to the public, and that the gate could not be replaced. The plaintiff, however, under the direction of the judge, had a verdict, which the Court of King's Bench declined to set aside.

The fact, however, that a gate has been put across a way is by no means conclusive, for it may be that the object of the owner was to prevent cattle straying, that

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is to say, it might be that he intended to dedicate the way as a highway with a reservation of the right of keeping a gate across it (*f*).

Length of user.

There is no fixed period during which user must be proved in order to justify the presumption of dedication. In one case (*g*) eight years was held to be sufficient, and in the course of his judgment Lord KENYON mentioned that in another great case six years had been held to suffice. In *R.* v. *Hudson* (*h*) four years was held to be too short a time; but in that instance the origin of the way was clearly accounted for, and where an express intention to dedicate was proved, eighteen months was regarded as sufficient length of user (*i*).

The true principle to be applied in gauging the value of evidence as to length of user may be gathered from the judgment of Lord DENMAN, C.J., in a case (*k*) the point of which was whether or not the defendant had released or abandoned a private easement over a public footway inconsistent with the public user:—"It is not so much the duration of the cesser, as the nature of the act done by the grantee of the easement, or of the adverse act acquiesced in by him, and the intention in him which either the one or the other indicates, which are material for the consideration of the jury. The period of time is only material as one element from which the grantee's intention to retain or abandon his easement may be inferred against him; and what period may be sufficient in any particular case must depend on all the accompanying circumstances."

(*f*) *Davies* v. *Stephens* (1836), 7 C. & P. 570. As to such limited dedication, see *post*, p. 28. The reader may also refer to *R.* v. *Hudson* (1732), 2 Str. 909; *British Museum* v. *Finnis* (1833), 5 C. & P. 460; *Healey* v. *Batley* (1875), L. R. 19 Eq. 375, as to obstructions, etc.

(*g*) *Rugby Charity* v. *Merryweather* (1790), 11 East, 376.

(*h*) (1732), 2 Str. 909.

(*i*) *North London Ry. Co.* v. *St. Mary, Islington* (1873), 27 L. T. 672; 37 J. P. 341; 21 W. R. 226. See also *Dawes* v. *Hawkins* (1860), 29 L. J. C. P. 343; 8 C. B. (N.S.) 848; and *Woodyer* v. *Hadden* (1813), 5 Taunt. 125, 137, *per* CHAMBRE, J.

(*k*) *R.* v. *Chorley* (1848), 12 Q. B. at p. 519.

Who can dedicate a highway?

An intention to dedicate a piece of ground as a highway may (subject to the restrictions mentioned in the following pages) be inferred against either the Crown, a corporate body, or a private owner.

The Crown.

This proposition is clearly laid down in the case of *R.* v. *East Mark* (*l*), and was approved by the Judicial Committee of the Privy Council in *Turner* v. *Walsh* (*m*). In the earlier case Lord Denman, C.J., said, "The law as lately laid down has led the courts into very inconvenient inquiries. If a road has been used by the public between forty and fifty years without objection, am I not to use it unless I know who has been the owner of it? The Crown certainly may dedicate a road to the public, and be bound by long acquiescence in public use. I think the public are not bound to inquire whether this or that owner would be more likely to know his rights and to assert them; and that we have gone quite wrong in entering upon such inquiries. Enjoyment for a great length of time ought to be sufficient evidence of dedication, unless the state of the property has been such as to make dedication impossible."

Corporate body.

The fact that the soil belongs to a public body does not of itself preclude a jury from inferring a dedication. in such cases the following appears to be a correct statement of the law:—If land be vested by an Act of Parliament in some public body, even though they are thereby bound to use it for some special purpose, yet, if the use of part of it by the public as a highway be not incompatible with the objects prescribed by the Act, they may make a dedication of such part of it (*n*): *secus*, however, if the special purpose be incompatible with the use of the land by the public as a highway (*n*).

(*l*) (1848), 11 Q. B. 877.

(*m*) (1881), 6 A. C. at p. 639; 50 L. J. P. C. 55; 45 L. T. 50.

(*n*) *R.* v. *Leake* (1833), 5 B. & Ad. 476, *per* Parke, J.; *Grand Junction Canal* v. *Petty* (1888), 57 L. J. Q. B. 572; 59 L. T. 767; 21 Q. B. D. 273; 36 W. R. 795; 52 J. P. 692; *Foster* v. *L. C. & D. Ry. Co.* (1895), 1 Q. B. 711; 64 L. J. Q. B. 65; 71 L. T. 855; 43 W. R. 116; *In re Gonty* v.

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Private individuals.

The general rule is that dedication in order to be effectual must be by an owner in fee simple; therefore dedication by a tenant for life, or by a lessee, will not suffice. In other words, the state of the title must be such as to render possible a valid dedication at the time when the jury are asked to infer dedication (*o*). But this general rule is subject to two qualifications which must be noticed:—

Limited owners.

(a) Obviously a reversioner or remainderman may consent to a dedication by the owner of the particular estate, *i.e.*, to the user of the road by the public (*p*); and such consent need not be express, but may be inferred. Where the public for fifty years used a road running over land which was occupied by a succession of tenants, one of whom frequently complained of the user to the agent of the owner of the land, who however took no action; Lord ELLENBOROUGH said (*q*), "After a long lapse of time and a frequent change of tenants, from the notorious and uninterrupted use of a way by the public, I should presume that the landlord had notice of the way being used, and that it was so used with his concurrence. In this case however, we have express evidence of notice; for notice to the steward was notice to the landlord." And in a later case, where evidence was given of acts of user extending over nearly seventy years, the judge was held justified in directing the jury that, though the land had been on lease for the whole of that period, they were at liberty, if they thought proper, to presume a dedication by the owner in fee, or his ancestor, at a time anterior to the land being leased (*r*).

M. S. & L. Ry. Co. (1896), 2 Q. B. 439; 65 L. J. Q. B. 625; 75 L. T. 239; 45 W. R. 83; *G. W. R.* v. *Solihull R. D. C.* (1902), 18 T. L. R. 707.

(*o*) *Wood* v. *Veal* (1822), 5 B. & Ald. 454; *R.* v. *Petrie* (1855), 4 E. & B. 743, 749; *Eyre* v. *New Forest Highway Board* (1892), 56 J. P. 517. See, however, ss. 16, 25 of the Settled Land Act, 1882.

(*p*) *Harper* v. *Charlesworth* (1825), 4 B. & C. at p. 591.

(*q*) *R.* v. *Barr*, 4 Camp. 16.

(*r*) *Winterbottom* v. *Lord Derby* (1867), L. R. 2 Ex. 316; 36 L. J. Ex. 194.

Unknown owner.

(b) After an uninterrupted user of a road by the public for many years a dedication may be inferred, even though it may not be known in whom the fee simple is, or was at any crucial period, vested (*s*). In such a case a proper direction to a jury would appear to be that "although there must be an intention on the part of the owner to dedicate, such user is so strong an evidence of his intention that the jury ought to find in favour of the dedication, unless there be some evidence that he did not consent" (*t*): and the jury might find a dedication in a given year by whoever was then the owner in fee, without proceeding to find who actually was such owner (*s*).

This doctrine may be of advantage to persons seeking to establish a public highway, for it will enable them to take advantage of any *hiatus*, during which the owner cannot, in order to rebut the inference to be drawn from user, prove affirmatively that the state of the title was such as to render a valid dedication impossible (*u*).

An "awarded" private road may be dedicated as a highway.

It may be useful to mention a case (*x*) in which a road had been originally set out in 1789 as a private road by an award under an Inclosure Act, and the adjoining landowners or occupiers were ordered by the award ever after to keep the road in repair. Sufficient evidence was given of user by the public prior to 1836 to support the presumption of a dedication in an ordinary case, and the court held that there was nothing in the fact of the road having been set out by the award, and the direction that repairs were to be done by the adjoining landowners or occupiers, to prevent the road becoming a highway repairable by the inhabitants at large.

(*s*) *R.* v. *The Inhabitants of East Mark* (1848), 11 Q. B. 877; *R.* v. *Petrie* (1855), 4 E. & B. 737.

(*t*) *Per* Erle, J., in *R.* v. *East Mark*, *supra*, at p. 884.

(*u*) See *R.* v. *Petrie*, *supra*; *Turner* v. *Walsh* (1881), 6 A. C. 636; 50 L. J. P. C. 55; 45 L. T. 50.

(*x*) *R.* v. *Bradfield* (1874), L. R. 9 Q. B. 552; 43 L. J. M. C. 155; 22 W. R. 693.

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Also a turnpike road after the expiry of the Turnpike Act.

Similarly, where a road made under a temporary Turnpike Act was used by the public and repaired by the parish both before and after the expiration of the Act, it was held that a dedication by the owner might be presumed so as to make the road a highway in perpetuity (*y*).

How far dedication may be limited or qualified.

A road, if dedicated as a highway, must be so dedicated in perpetuity (*z*), and to the whole public (*a*). An attempt to dedicate it for a limited number of years, or for an uncertain period, or to a limited portion of the public (*e.g.*, the inhabitants of one parish), would be entirely void (*a*).

It was indeed at one time doubtful whether there could be a valid dedication subject to any limitation whatever; but this doubt no longer exists, and it is now well settled that a highway may be dedicated for a limited purpose (*b*), or subject to certain restrictions. Thus it may be dedicated (in the case of a bridge) for use only when an adjacent public ford is dangerous (*c*), or subject to the exercise of market rights (*d*), or subject to a pre-existing right of user by adjoining owners for the purpose of depositing goods thereon (*e*).

Again, a canal company may dedicate a towing path as a footway with the limitation that the user must be such as will not interfere with the ordinary use of the towing path by the company (*f*). Similarly a footpath may

(*y*) *R.* v. *Thomas* (1857), 7 E. & B. 399.

(*z*) *Dawes* v. *Hawkins* (1860), 8 C. B. (N.S.) 848.

(*a*) *Poole* v. *Huskinson* (1843), 11 M. & W. at p. 830; *Bermondsey Vestry* v. *Brown* (1865), L. R. 1 Eq. 204; 13 L. T. 574; 30 J. P. 118.

(*b*) *Fisher* v. *Prowse* (1862), 31 L. J. Q. B. 212; 2 B. & S. 780.

(*c*) *R.* v. *Northampton* (1814), 2 M. & S. 262.

(*d*) *A.-G.* v. *Horner* (1885), 11 A. C. 66; 55 L. J. Q. B. 193; 54 L. T. 281; 34 W. R. 641; 50 J. P. 564.

(*e*) *Morant* v. *Chamberlain* (1861), 6 H. & N. 541; 30 L. J. Ex. 299; *Le Neve* v. *Mile End Old Town* (1858), 8 E. & B. 1054; *Warner* v. *Wandsworth Board of Works* (1889), 53 J. P. 471.

(*f*) *Grand Junction Canal Co.* v. *Petty* (1888), 21 Q. B. D.; Lord ESHER, M.R., at p. 276; 57 L. J. Q. B. 572; 59 L. T. 767; 52 J. P. 692; 36 W. R. 795.

exist along the top of a sea wall subject to the right of the commissioners (or other public body empowered by statute to construct and maintain the wall) to interrupt the highway when taking proper steps to repair the wall (*g*). And there may be a dedication of a foot-path across a field subject to the right of the owner of the soil to plough it up in due course of husbandry, and destroy all trace of it for the time (*h*).

Whether or not a private person can dedicate a highway subject to payment of a toll by all who use it is doubtful. The general opinion appears to be that a right to take toll must have its origin in a charter or statute; and, if this be so, an attempted dedication subject to a toll will amount to no dedication at all, and the so-called toll will amount only to a wayleave payable to the owner of a private way.

The point was, to a certain extent, discussed in *Austerberry* v. *Oldham Corporation* (*i*), but the court expressly reserved it. There are some *dicta* in an earlier case (*k*) which seem to suggest the possibility of such a dedication.

(ii.) User.

An intention to dedicate a highway is not sufficient unless the public in fact use the road, such user proving the acceptance or adoption of the way by the parish. Where, however, dedication is to be inferred from user, no further proof of adoption is necessary (*l*).

C. Creation of highways by or under a statute.

Familiar instances of this mode of creating a highway are supplied by the old Turnpike Acts, and by awards made under Inclosure Acts. Reference may also be

(*g*) *Greenwich Board of Works* v. *Maudsley* (1870), L. R. 5 Q. B., *per* Blackburn, J., at p. 403; 39 L. J. Q. B. 205; 23 L. T. 121; 18 W. R. 948.

(*h*) *Mercer* v. *Woodgate* (1870), L. R. 5 Q. B. 26; 39 L. J. M. C. 21; 21 L. T. 458; 18 W. R. 116; *Arnold* v. *Blaker* (1871), L. R. 6 Q. B. 433 40 L. J. Q. B. 185; 19 W. R. 1090.

(*i*) (1885), 29 C. D. 750; 55 L. J. Ch. 633; 53 L. T. 543; 53 W. R. 807; 49 J. P. 532.

(*k*) *Lord Pelham* v. *Pickersgill* (1787), 1 T. R. 660.

(*l*) *Cubitt* v. *Maxse* (1873), L. R. 8 C. P. 714; 42 L. J. C. P. 278; 29 L. T. 244; 21 W. R. 789; *R.* v. *Leake* (1833), 5 B. & Ad. 469.

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made to the powers conferred on an urban (*m*) district council by s. 146 of the Public Health Act, 1875, and to the provisions of s. 23 of the Highway Act, 1835, and s. 36 of the Highway Act, 1862. Where a road purporting to have been set out under a Turnpike Act had been opened and used by the public for many years, its *status* as a highway was held not to be affected by proof that it was not made in the prescribed manner or of the prescribed width (*n*). On the other hand, where a road was set out by the commissioner under an Inclosure Act, but was never completely formed, and was not used by the public, the court held that it never became a public highway (*o*).

Width of highway.

Primâ facie, when a highway runs between two fences, unless there is something to show the contrary, the public have a right to the whole space, and are not confined to the metalled part (*p*).

It was pointed out in a recent case (*q*) in the Court of Appeal that in making such presumption regard must be had to the circumstances of each case. Lord RUSSELL, C.J., said that something must depend upon the general state of the particular district, whether enclosed or unenclosed, upon the regularity or irregularity of the margins, and on the relative levels of the various parts of the strips of land adjoining the metalled road. And apparently the presumption may be easily rebutted so as to throw upon the local authority the burden of proving that the margins have in fact been dedicated to the public as part of the highway (*q*).

(*m*) Applied to rural district councils by s. 25 (1) of the Local Government Act, 1894.

(*n*) *R.* v. *Lordsmere* (1850), 19 L. J. M. C. 215.

(*o*) *Cubitt* v. *Lady Caroline Maxse*, *supra*.

(*p*) *Reg.* v. *The United Kingdom Electric Telegraph Co.* (1862), 31 L. J. M. C. 166 ; 6 L. T. 378 ; 10 W. R. 538 ; *Evelyn* v. *Merriclees*, Times, 14th December, 1900.

(*q*) *Neeld* v. *Hendon Urban District Council* (1899), 16 T. L. R. 50 ; 63 J. P. 724. See also *Countess of Belmore* v. *Kent County Council* (1901), 1 Ch. 873 ; 70 L. J. Ch. 501 ; 17 T. L. R. 360 ; 84 L. T. 523 ; 49 W. R. 459 ; 65 J. P. 456.

Extinction of a highway.

The common law rule is, "Once a highway, always a highway"; but of course an Act of Parliament may expressly put an end to a highway; and when the Legislature clearly and distinctly authorises the doing of a thing which is physically inconsistent with the continuance of an existing public right of way, the right is impliedly extinguished (*r*).

A highway may, as to a portion of it, become extinguished as the effect of a diversion being allowed by quarter sessions under ss. 84—92 of the Highway Act, 1835, or s. 44 of the Highway Act, 1862; and a highway may under the provisions of the last-mentioned statutes be entirely stopped up.

III. WHEN A HIGHWAY IS REPAIRABLE BY THE INHABITANTS AT LARGE.

(iii.) What highways are repairable by the inhabitants at large.

We must now consider what highways are "repairable by the inhabitants at large," for to such the Private Street Works Act has no application.

Common law liability of parish.

At common law the liability to repair every highway has always rested, and still rests, *primâ facie* upon the inhabitants (*s*) of the parish in which it lies (*t*). It is, however, open to such inhabitants to show that the liability does not in fact rest upon them, and this they can do in several ways:—

Exceptions:—

(i.) Customary liability of some township.

FIRSTLY, they may show that the inhabitants (*s*) of some township within the parish are by custom liable to repair all highways within that township. This exception is, however, not material for the present purpose, the liability of a township being a liability of the inhabitants at large no less than the liability of a parish.

(*r*) *Yarmouth* v. *Simmons* (1878), 10 Ch. D. 518; 47 L. J. Ch. 792; 38 L. T. 881; 26 W. R. 802.

(*s*) *I.e.*, occupiers of land. To the lay reader the idea of the liability of the "inhabitants at large" (whether of a parish or township) may be a revelation. Such liability, however, still exists in respect of all highways repairable at the public expense, and has not (from a legal standpoint) been affected by the creation from time to time of various authorities charged with the practical administration of highways.

(*t*) *R.* v. *Sheffield Inhabitants* (1787), 2 T. R. 106.

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(ii.) Liability of individual or corporation.

SECONDLY, it may be shown that the liability rests upon some individual, or corporate body, either (a) *ratione clausuræ*, (b) by prescription, or (c) under the provisions of some statute :—

(a) *Ratione clausuræ.*

(a) Liability to repair *ratione clausuræ* arises when the owner of open land alongside a highway encloses such land, and it ceases if the enclosure is abolished :

(b) Prescription.

(b) Either a corporation or an individual may be liable to repair a highway by prescription. In the case of an individual some consideration must be shown, *e.g.*, a right of toll, or the tenure of land. The latter is the usual consideration, and the liability is then spoken of as existing *ratione tenuræ :*

(c) Statutory duty.

(c) Where a statute imposes upon a person or corporation the duty of repairing a highway, it depends upon the terms of the statute whether or not the liability of the inhabitants is extinguished. As to this the reader is referred to p. 36, *post.*

(iii.) No one liable to repair.

THIRDLY, it may be shown that no one is liable to repair the highway in question ; but this is only possible where such highway has been dedicated since 1836 (see p. 34, *post*).

Highway Act, 1835, s. 23.

We must now consider the effect of the Highway Act, 1835. As matters stood at the date of this statute, *every* highway was repairable by someone, and was repairable by the inhabitants at large, unless they could prove someone else to be liable either *ratione clausuræ*, by prescription, or under some statute ; and this state of the law laid a heavy burden upon the various communities, for they were saddled with the expense of for ever repairing any road which a landowner might choose to dedicate, and which the public adopted by user. In order to remedy this hardship the statute in question imposed limitations upon the power of an owner to thus render the parish liable to repair any road dedicated as a highway in the future, s. 23 providing that

"No road or occupation way made or hereafter (*u*) to be made by and at the expense of any individual or private person, body politic or corporate, nor any road already set out or to be hereafter set out as a private driftway or horsepath in any award of commissioners under an inclosure Act, shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable or liable to repair, unless the person, body politic or corporate, proposing to dedicate such highway to the use of the public, shall give three calendar months' previous notice in writing to the surveyor of the parish of his intention to dedicate such highway to the use of the public, describing its situation and extent, and shall have made or shall make the same in a substantial manner, and of the width required by this Act, and to the satisfaction (*x*) of the said surveyor, and of any two justices of the peace of the division in which such highway is situate, in petty sessions assembled, who are hereby required, on receiving notice from such person, or body politic or corporate, to view the same, and to certify that such highway has been made in a substantial manner, and of the width required by this Act, at the expense of the party requiring such view, which certificate shall be enrolled at the quarter session holden next after the granting thereof, then and in such case, after the said highway shall have been used by the public, and duly repaired and kept in repair, by the said person, body politic or corporate, for the space of twelve calendar months, such highway

(*u*) The Act came into force on 20th March, 1836.

(*x*) In approving the condition of a proposed new highway the authority should consider s. 150 of the Public Health Act, 1875, or s. 6 (1) *post*; *R.* v. *Dukinfield* (1863), 32 L. J. M. C. 230 ; 4 B. & S. 158 ; 27 J. P. 805 (decided on s. 68 of the Public Health Act, 1848): "substantial manner" means substantial having regard to the situation, for what would suffice in a rural district would be insufficient in a town, and paving, channelling, etc., might reasonably be required.

shall for ever thereafter be kept in repair by the parish in which it is situate: Provided, nevertheless, that on receipt of such notice as aforesaid the surveyor of the said parish shall call a vestry meeting of the inhabitants of such parish, and if such vestry shall deem such highway not to be of sufficient utility to the inhabitants of the said parish to justify its being kept in repair at the expense of the said parish, any one justice of the peace, on the application of the said surveyor, shall summon the party proposing to make the new highway to appear before the justices at the next special sessions for the highways to be held in and for the division in which the said intended highway shall be situate; and the question as to the utility as aforesaid of such highway shall be determined at the discretion of such justices."

The effect of this section, as explained in *Roberts* v. *Hunt* (*y*), is that there may be highways for the repair of which no one is liable, viz., roads (within the meaning of this section) which have been dedicated as highways since 1836, without compliance with the prescribed formalities. But it must not be too hastily assumed that, because a road has been dedicated since the Act and informally, it cannot be repairable by the inhabitants at large; on this question the following points must be considered:—

(1) The section has been held (*z*) not to apply to every highway dedicated after 1836; and in respect to any highway not contemplated by it the common law liability of the inhabitants remains. Thus it was held not to apply to a road made by turnpike trustees, and therefore, when a dedication by user was presumed after the turnpike Act had expired, the absence of the justices'

(*y*) (1850), 15 Q. B. 17.

(*z*) Notice also that it does not (at least in express terms) include "awarded" carriage roads.

certificate did not prevent the road from becoming repairable by the inhabitants at large (*a*). And in a later case (*b*) BACON, V.-C., laid down that the "section has no application to the case of a person who has not made the road at his own expense, who does not propose to dedicate the highway to the use of the public, and who does not intend, or undertake, to make it, or to keep it, in repair at his own expense for twelve months, in order at the end of that period to throw the future care and expense of the highway on the surveyor and the general rate."

This statement is, however, generally regarded as too wide, and the summing up of WILLS, J., in *Eyre* v. *New Forest Highway Board* (*c*), which was characterised by the Court of Appeal as "a complete exposition of the law," would appear to negative the possibility of a private individual dedicating a highway so as to make it repairable by the public except by following the provisions of this section.

(2) The maxim *omnia præsumuntur rite et solemniter esse acta* will warrant the justices in presuming (in a proper case) that the necessary formalities were in fact observed, although no record of the fact can be found. In *Williams* v. *Eyton* (*d*) an award, after setting out certain new roads, directed the existing roads to be stopped up, which under the provisions of the General Enclosure Act could only be done on an order of justices: forty years after the allotment the court presumed that such an order had been made on proof that the completion of the new roads had been certified by two justices, and that a gate (which had since been kept locked) had been put up across the old road in question, a small fee

(*a*) *R.* v. *Thomas* (1857), 7 E. & B. 399.

(*b*) *Healey* v. *Batley Corporation* (1875), L. R. 19 Eq. at p. 393; 44 L. J. Ch. 642; 39 J. P. 423; and see the judgment of PHILLIMORE, J., in *Leigh-on-Sea Urban District Council* v. *King*, *infra*.

(*c*) (1892), 56 J. P. 517.

(*d*) (1858), 2 H. & N. 771; affirmed 4 H. & N. 357.

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being charged for the use of the road by any but foot passengers. In a recent case (*e*) the court had to decide whether there was any evidence on which the justices could find that a road made in 1842 was a highway repairable by the inhabitants at large. It appeared that in 1842 a vestry meeting resolved to stop up a road, and in lieu thereof to open a new road, and such new road was substituted accordingly. There was evidence of repairs on the new road on one occasion, many years prior to the trial of the action, by the surveyor for the parish (whether as surveyor or otherwise did not appear), and also of repairs by the parish council to the footpath in the new road. Ever since 1842 the new road had been open to the public, but at the hearing before the magistrates no evidence was given as to any certificate having been enrolled, or steps taken under s. 23 or s. 84 of the Highway Act, 1835. The magistrates found as a fact that the new road was a highway repairable by the inhabitants at large, and stated a case asking the Divisional Court whether there was evidence to justify such finding. The court held that there was evidence to justify such finding. Both of the judges were of opinion that, whether the case was one of the dedication of a new highway within s. 23, or of the substitution of a new highway for an old one within ss. 84—92, it was open to the justices to presume that all necessary formalities had been observed. They based this opinion upon the cases of *Deponthieu* v. *Pennefeather* (1814), 5 Taunt. 634, and *Williams* v. *Eyton* (*supra*), and upon the fact that it is the duty of judges in matters of ancient possession or public right to presume in favour of long, open and continuous usage.

Liability to repair under some statute.

In considering the various ways in which a parish might get rid of its liability to repair, reference was made to cases in which the liability was by some Act

(*e*) *Leigh-on-Sea Urban District Council* v. *King* (1901), 1 K. B. 747; 70 L. J. K. B. 313; 83 L. T. 777; 65 J. P. 243 (PHILLIMORE and BRUCE, JJ.).

of Parliament (turnpike or other) imposed upon some individual or corporation. Unless the Act in question in express terms, or by necessary implication, exempts the public from liability, the common law liability remains, and may be enforced in the event of the persons primarily liable neglecting their duty: thus where a statute enacted that the paving of a particular street should be under the care of commissioners, and provided a fund to be applied to that purpose, and another statute passed for paving the streets of the parish contained a clause that it should not extend to the particular street, the inhabitants of the parish were held not to be exempted from their common law liability to keep that street in repair (*f*): and where a local turnpike Act, after empowering the trustees under it to take tolls, directed that the roads should from time to time be repaired by the trustees out of the money arising by virtue of the Act, it was held that this only made the tolls an auxiliary fund in the hands of the trustees, and that the inhabitants were nevertheless liable to be indicted for non-repair of the road (*g*).

It would appear also (*h*) that, where an individual is liable to repair a highway *ratione clausuræ*, the parish is not relieved from its primary liability. If, however, his liability arises *ratione tenuræ*, the parish is completely exonerated.

The result of this is that we have two classes of "highways repairable by the inhabitants at large," viz., (a) those for which the public are primarily (and solely) liable, (b) those for which they are secondarily liable; and it is not quite clear whether both of these classes (or only the first) are excluded from the scope of the Private Street Works Act. In one case (*i*), FRY, J.,

(*f*) *Rex* v. *St. George, Hanover Square* (1812), 3 Camp. 222.

(*g*) *Rex* v. *Netherthong* (1818), 2 B. & Ald. 179. See also *R.* v. *Lordsmere* (1850), 19 L. J. M. C. 215.

(*h*) See the arguments in *R.* v. *Brightside Bierlow* (1849), 13 Q. B. 933.

(*i*) *Swansea Improvement Co.* v. *Glamorganshire* (1880), 41 L. T. 583.

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held that a turnpike road was not "a highway repairable by the inhabitants at large"; but it was apparently assumed that under the particular Act then in question, the public were relieved from *all* liability: in an earlier case (*k*), a strong court had ruled that the words "repairable by the inhabitants at large" in the Public Health Acts were used in contradistinction to "repairable *ratione tenuræ*." The authors submit that a highway, for the repair of which the inhabitants at large are liable (even only secondarily), cannot be dealt with by a local authority under this statute (*l*).

Part of a street.

"*Part of a Street.*"—A "street" within the meaning of the Act may itself be "part of a street" in the popular sense of the term, *i.e.*, it may be a strip, or new footpath, added to an old highway (see p. 15, and p. 61, *post*, as to the apportionment in such a case). The Act, however, contemplates a possible subdivision of a "street" (technically so called), and an attempt must therefore be made to understand what principle of division is intended. Apparently, three possible meanings may be given to the words "part of a street." They may be read as contemplating:—(1) a transverse section, *i.e.*, a certain "length" of a street for its full breadth, (2) a longitudinal section, *i.e.*, a "strip" (*e.g.*, one pavement) for the entire length of the street, or, (3) sections both transverse and longitudinal, *i.e.*, a "patch," or local part, the actual area to be repaired.

In the authors' view, the second alternative may be rejected. Suppose (for an example) a street 400 yards long with a pavement on one side; if 50 yards of such pavement needed repair, this interpretation would require the cost to be apportioned on the whole 400 yards of

(*k*) *Gibson* v. *Preston Corporation* (1870), L. R. 5 Q. B. 218; 39 L. J. Q. B. 131; 22 L. T. 293; 18 W. R. 689; 34 J. P. 342.

(*l*) The arguments and judgments in *Austerberry* v. *Oldham Corporation* (1885), 29 C. D. 750; 55 L. J. Ch. 633; 53 L. T. 543; 33 W. R. 807; 49 J. P. 532, appear to support this view.

frontage to this "strip"; in the words of Pollock, B., "owners could be taxed at a point where no improvement was being made" (*m*).

This reduces the choice to the first and third interpretations; and in considering their respective claims to acceptance, it will be convenient to look first at the wording of the older provision in s. 150 of the Public Health Act, 1875. So far as is material, that section runs: "When any street, or the carriageway, footway, or any other part of such street, is not sewered . . . paved . . . such authority may, by notice . . . to the respective owners or occupiers of the premises fronting, adjoining, or abutting on such parts thereof as may require to be sewered . . . paved . . ." etc.

A local authority, acting under the above section, executed certain repairs to the footway and channel on the south side of a street, and apportioned the expenses on the owners of property on that side of the street only. The court held that the word "parts" could not be taken to mean transverse sections of a street, but rather the local parts to which the repairs were done; and after pointing out that the section imposes liability on the owners of premises fronting, adjoining, or abutting, not on "such street," but on "such parts thereof as require repair," said, the meaning of that expression is to make the premises adjoining the part repaired liable (*n*).

The subject-matter of the case was "a definite part of the street, viz., one of the footways; it could be cut off from the rest of the street, and the owners of houses abutting on the footway might be called on to do the whole of the work required, the word 'footway' being specially mentioned in the section as one of the definite parts of a street which may require repair" (*o*).

(*m*) *Clacton Local Board* v. *Young* (1895), 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. 877; 43 W. R. 219; 59 J. P. 581.

(*n*) *Wakefield Urban Sanitary Authority* v. *Mander* (1880), 5 C. P. D. 248; 28 W. R. 922; 44 J. P. 522.

(*o*) *Ibid.*, p. 252, *per* Denman, J.

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In this case, as the whole length of pavement was being repaired, no question arose as to dividing the road transversely also, and the court had not to consider how the apportionment would have had to be made, if only one-half (in length) of the southern pavement had needed repair; but in a later case, ROMER, J. (*p*), clearly regarded the same section as allowing a transverse division.

On turning to s. 6 (1) of the Private Street Works Act, it will be observed that the Legislature have used language materially differing from that used in s. 150 of the Public Health Act, 1875. They have omitted the words "carriageway, footway, or any other part," which clearly pointed to longitudinal division; and the liability is now imposed, not on premises fronting, adjoining, or abutting on such parts of the street as may require to be sewered, etc., but "on the premises fronting, etc., on the street or part of the street" with respect to which it has been resolved to execute private street works. The alteration can hardly have been other than intentional, and in the view of the authors, a local authority under the present Act must deal with a whole street, or a "length" of it for the full width, and apportion the cost on the frontagers on both sides. In support of this view may be cited a *dictum* of JESSEL, M.R. (*q*), to the effect that the primary meaning of "part of a street" is a part ascertained by a transverse section. If this be so, there is, it is submitted, nothing in the Act calling for a different meaning; in fact the general idea of the Act appears to contemplate such an interpretation.

Having formed some idea as to the probable meaning of the words, we must now consider the only case (*r*) so

(*p*) *Handsworth Local Board* v. *Taylor* (1893), repd. (1897), 2 Ch. 442, n.; 69 L. T. 798; 58 J. P. 9.

(*q*) *Mile End Vestry* v. *Whitechapel Union* (1877), 1 Q. B. D. 680; 46 L. J. M. C. 138; 35 L. T. 354; 24 W. R. 719; 40 J. P. 565. See also *Paddington Vestry* v. *N. Met. Rail. Co.* (1894), 1 Q. B. 633; 63 L. J. Q. B. 316; 58 J. P. 413.

(*r*) *Claxton Local Board* v. *Young* (1895), 1 Q. B. 395; 64 L. J. M. C. 124; 71 L. T. 877; 43 W. R. 219; 59 J. P. 581.

far decided upon them. It was proposed to make up, under the Private Street Works Act, a street with a roadway and a 12-ft. footpath upon the north side only, and the surveyor had apportioned the expenses of paving and kerbing such footpath among the owners of premises abutting on the north side of the street only. The street had buildings on the north side, being bounded almost entirely on the south side by land of the local authority, which land was open to the public and used for pedestrian traffic. The other expenses of the proposed works were apportioned among the owners of properties abutting on both sides of the street, including the local authority themselves. The owners of the premises on the north side of the street contended that the apportionment was incorrect in principle and that the whole of the expenses of the works should have been added together and apportioned among all the owners on both sides according to frontage. Pollock, B., in delivering the judgment of the court said: "In the present case the street is entirely a new street, and it seems to me that it must be dealt with as a whole, and that all persons are liable to contribute to the expenses, whose premises front, adjoin, or abut on the street. The only thing which militates against this view is the use of the expression 'or part of a street,' but here we are dealing with a new road, and we cannot read those words as implying a longitudinal division, for in that case owners could be taxed at a point where no improvement was being made."

It must be confessed that the reasoning in this judgment is not easy to follow; and in any case it can only be regarded as conclusive in the case of a new road. It would seem, however, that if in the future a second footpath were added on the south side, the expenses ought in fairness to be borne by the owners on both sides; and further there is no obvious reason for treating in different ways, (1) a new road requiring at present only a roadway and one pavement, and (2) an old road

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requiring for the moment repairs to the roadway and one of two pavements only, or even to one pavement only.

The authors therefore venture to repeat the opinion already expressed that "part of a street" must be read as meaning any given length of a street from side to side, admitting of no longitudinal division, except where part of the street is already a highway, repairable by the inhabitants at large (as to this, see p. 61), in which case the new portion is really a "street" in itself.

It must be remembered that an authority who have resolved to deal with a street as a whole cannot afterwards divide it into sections for the purpose of the apportionment (*s*). Circumstances, however, may render it desirable to deal with a street by sections, instead of undertaking all the necessary repairs throughout the street at once. Such a course was apparently contemplated by ROMER, J., in *Handsworth Local Board* v. *Taylor* (*t*), where he said: "If a part of the street be sewered to the satisfaction of the board, as the sewering of part of the street, then the board cannot under the section (s. 150), put on the frontagers of that part the expense of sewering the rest of the street, or of making a new sewer for the whole street, or of altering the sewers of that part of it."

"Satisfaction of the authority."
"From time to time."

"*To the satisfaction of the urban authority*"; "*May from time to time resolve.*"—TO entitle the local authority to act under the Act, it must appear that a street is not sewered, made good, etc., to their satisfaction. This is a question of fact (*u*), and one which goes to the root of their jurisdiction to execute work at the expense of the frontagers.

The questions of "satisfaction" and the exercise of

(*s*) *Whitchurch* v. *Fulham* (1866), L. R. 1 Q. B. 233; 30 J. P. 229; 35 L. J. M. C. 145; 13 L. T. 631; 14 W. R. 277.

(*t*) (1893), reported (1897), 2 Ch. 442, n.; 69 L. T. 798; 58 J. P. 9.

(*u*) *Walthamstow Local Board* v. *Staines* (1891), 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. 430; 7 T. L. R. 446.

the powers "from time to time," must be considered under two heads:— Chap. III.

(1) SEWERING.

It was decided under s. 150 of the Public Health Act, 1875, that having regard to the duties as to sewers imposed upon the local authority by that Act, owners could not be called upon to again sewer a street, if the authority had once approved it as being properly sewered. (i.) Sewering.

In 1887, in the leading case (*x*) upon the point, the Court of Appeal laid down, that after a sewer has been made in a street by owners of property and has become vested in the local authority, it is the duty of the local authority to see whether the sewer be sufficient for the drainage of the street for the purposes of which it was then used; that the local authority are entitled to a reasonable time within which to make up their minds whether the sewer be sufficient, but if, after the lapse of such reasonable time, they have done nothing, and expressed no view on the subject, their silence must be taken to be conclusive as a matter of fact that at that time they were satisfied with the sewer for the purposes for which it was then used. And in 1893 the same tribunal refused to accept the contention that there could be no such binding approval in the case of a sewer not complete as a whole, or not effective for want of an outfall (*y*): in this instance an owner had laid down his section of a sewer according to a building scheme submitted to the local authority, who expressed their satisfaction (which, as the Court pointed out, they need not have done); it was held that having expressed themselves satisfied with the work, they could not go back upon their decision, because somebody else had not

(*x*) *Bonella* v. *Twickenham Local Board* (1887), 20 Q. B. D. 63; 57 L. J. M. C. 1; 58 L. T. 299; 36 W. R. 50; 52 J. P. 356.

(*y*) *Hornsey Local Board* v. *Davis* (1893), 1 Q. B. 756; 62 L. J. Q. B 427; 68 L. T. 503; 57 J. P. 612.

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done that which was necessary to make the work an effective sewer.

These decisions, however, must be read subject to one qualification, viz., that an authority may approve a sewer as sufficient for the present needs of one or more houses without necessarily intending to approve it as a satisfactory sewer for the street in question (*z*). In the words of KEKEWICH, J., "I think it would be wrong to say that a street is 'sewered' when there is nothing more than a series of sewers draining some of the houses on one side in one direction, and some of the houses on the other side in another direction, and not forming parts of one system." But, as the learned judge pointed out, that was a matter for the authority to decide, and the question for him was, had they in fact approved the street as properly sewered? And he proceeded: ". . . It seems to me, therefore, that, remembering that this street was in the meantime growing, the local authority had not exhausted the time allowed them; for in such cases, the time within which the local authority are to determine whether a street has been sufficiently sewered or not, must be an elastic one depending upon the circumstances. Here the local authority cannot be taken in law to have come to the conclusion that this street was sufficiently sewered. As I have already mentioned, they certainly never came to that conclusion in fact. On the contrary, when first the matter is brought before them, they are clearly of opinion that it is not sufficiently sewered, and they take proceedings on that footing. It seems to me they were strictly right, and that they acted within the provisions of the statute" (*a*).

In another case (*b*), CHANNELL, J., in a considered

(*z*) *Handsworth Local Board* v. *Taylor* (1893), reported (1897), 2 Ch. 442, n.; 69 L. T. 798; 58 J. P. 9.

(*a*) *Handsworth District Council* v. *Derrington* (1897), 2 Ch. 433; 61 J. P. 518; 66 L. J. Ch. 691; 77 L. T. 73.

(*b*) *Rishton* v. *Haslingden Corporation* (1898), 1 Q. B. 294; 67 L. J. Q. B. 387; 62 J. P. 85; 77 L. T. 620.

judgment of himself and Hawkins, J., expressed an opinion (unnecessary to the decision of that case) that where a street was in fact sewered, although very imperfectly, but there had been no change whatever in the street for seventy years, and the authority had been content with it ever since they became an authority, they could not say they were dissatisfied with it. He added, "We think that the decision of Romer, J., in *Handsworth Local Board* v. *Taylor* (*supra*), applies only to a 'growing' street, and in the present case, if there had been new buildings fronting this street, the authority might have said they had never been satisfied with the sewering of the street, which it had become. They have, however, been satisfied with the sewering of the street, which in fact it is."

It follows from the above cases and particularly from the judgment of Lord Esher, M.R., in *Bonella* v. *Twickenham* (*supra*), that, if a local authority at any time think it desirable with regard to the general requirements of *the district* to alter their system of sewerage, they cannot call upon the frontagers in a private street to construct a new sewer in relation to such general requirements, when they have expressed themselves as satisfied, or owing to lapse of time must be deemed to have been in fact satisfied, with the existing sewer as a sewer for the particular street.

The above decisions are all apparently applicable to the Private Street Works Act.

(2) works other than sewering.

(ii.) Works other than sewering.

On s. 150 of the Public Health Act, 1875, it has been decided that so long as a street is not a highway repairable by the inhabitants at large, and is not paved, etc., to the satisfaction of the local authority, the local authority may call on the frontagers to pave, etc., from time to time as occasion may require (*c*). The court again repeated their opinion that this principle does not apply

(*c*) *Barry and Cadoxton Local Board* v. *Parry* (1895), 2 Q. B. 110; 64 L. J. Q. B. 512; 72 L. T. 692; 43 W. R. 504; 59 J. P. 421.

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to sewering. Lord RUSSELL, C.J., also said: "I think that if a private street is put into a condition in respect of paving, etc., with which the local authority ought in reason to be satisfied, they cannot lawfully express dissatisfaction and require the work to be done all over again before it falls again into disrepair. Upon this point, however, I understand my learned brother (CHARLES, J.), is not prepared to go so far."

The decision in the last-mentioned case and the insertion in the Private Street Works Act of the words "from time to time," enable a local authority to execute private street works (except sewering) from time to time as occasion may require unless and until the street has been declared to be a highway repairable by the inhabitants at large.

The authors further, with great respect, submit that the principle enunciated in the *dictum* of the late Lord RUSSELL, C.J., that if a local authority ought in reason to be satisfied with any of the works mentioned in the Private Street Works Act, they cannot lawfully express dissatisfaction, is sound law, and that if justices were to find, upon a sufficiency of evidence, that a local authority were acting unreasonably, their finding would not be disturbed; in fact s. 7 (d) appears to be expressly intended to meet such a case.

What work may be done.

"*To sewer, level, pave, metal, flag, channel, or make good, or provide proper means for lighting.*"—It is provided by s. 5 that:

> "Words referring to '*paving, metalling, and flagging*' shall be construed as including macadamising, asphalting, gravelling, kerbing, and every method of making a carriageway or footway."

"*Means for lighting*" will not of course include the provision of gas, or electric power.

How far a street may be altered.

Under s. 150 of the Public Health Act it was held that an authority must deal with a "street as they find

it" (*d*). Further, they could not require an owner to level a street, upon which his property fronted, so as to bring it into conformity with the level of other streets (*e*). And again, where it appeared that, at the time of a street being laid out by a building owner, an authority had approved plans showing the respective widths of the intended roadway and pavement, the Court of Appeal held (*d*) that s. 150 gave them no power to widen the one at the expense of the other; that the street was laid out in accordance with the plans which had been approved, and it was that street which the local authority had power to make good, and they had no power to alter the proportions of carriageway and footway and make good a street different from that which was approved.

Incidental works:

The present statute is, however, wider in its terms: it contains a section (9 (1)) providing for "incidental works":—

> "The urban authority may include in any works to be done under this Act with respect to any street or part of a street any works which they think necessary for bringing the street or part of a street, as regards sewerage, drainage, level, or other matters, into conformity with any other streets (whether repairable or not by the inhabitants at large), including the provision of separate sewers for the reception of sewage and of surface water respectively."

This section is evidently intended to avoid the difficulty experienced in *Carey's Case:* how far it enables an authority to alter a street has yet to be decided.

Compensation to adjoining owners.

It should be pointed out that any alteration causing damage to an adjoining owner will render the local authority liable to pay compensation under s. 308 (*f*) of

(*d*) *Robertson* v. *Mayor, &c. of Bristol* (1900), 2 Q. B. 198; 64 J. P. 389.

(*e*) *Carey* v. *Kingston-on-Hull* (1865), 34 L. J. M. C. 7; 29 J. P. 116; 13 W. R. 143; 11 L. T. 389.

(*f*) See Appendix for this section.

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the Public Health Act, 1875, for by s. 1 of the Private Street Works Act, that Act is to be construed as one with the Public Health Acts, including the Public Health Act, 1875 (*g*). Cases therefore decided as to injuries done by a local authority when acting under s. 150 of the Public Health Act, 1875, or the corresponding section of the Public Health Act, 1848, are equally applicable to injuries done when acting under the Private Street Works Act. As an instance of the kind of damage most likely to be caused may be cited the case of *R.* v. *Wallasey Local Board* (*h*), where a local board acting under the Act of 1848 altered the level of a street, and thereby rendered the access to an adjoining house difficult and dangerous: it was held that the owner was entitled to compensation.

Nature of expenses.

Expenses of Private Street Works.—Section 23 provides that—

> "All expenses incurred or payable by an urban authority and a rural sanitary authority respectively in the execution of this Act, and not otherwise provided for, may be charged and defrayed as part of the expenses incurred by them respectively in the execution of the Public Health Acts."

The mode of defraying the expenses of an urban authority is prescribed by s. 207 of the Public Health Act, 1875, for which *vide* the Appendix.

The expenses of a rural authority are provided for by s. 229, for which also see the Appendix.

In a rural district, however, it would be manifestly unfair for, say, nineteen out of the twenty contributory places comprised in the district to be called upon to pay towards the expenses of private street improvements in the twentieth. To obviate this injustice it is the practice of the Local Government Board, in their Order putting

(*g*) Short Titles Act, 1892 (55 & 56 Vict. c. 10).

(*h*) (1869), L. R. 4 Q. B. 351; 38 L. J. Q. B. 217; 21 L. T. 90; 17 W. R. 766; 33 J. P. 677.

the Act in force in any contributory place in a rural district, to provide that "the expenses incurred or payable by a rural district council in the execution of the powers conferred upon them by the Order, except so far as such expenses may relate to their establishment and officers, shall be deemed to be 'special expenses' within the meaning of the Public Health Act, 1875, and shall be charged as such upon the contributory place."

The mode of raising special expenses in any contributory place is prescribed by s. 230 of the Public Health Act, 1875, for which *vide* Appendix.

How a local authority can provide for meeting the expenses.

Seeing that an authority cannot recover anything from the adjoining owners until the works have been completed, and the final apportionment made and settled, it is necessary to consider what they must do in the meantime to enable them to meet the expenses.

1. They may treat the expenses as current and draw on their treasurer in the ordinary course.

2. (a) If an urban authority, they may borrow the money; for s. 18 provides that—

> "The urban authority may from time to time, with the sanction of the Local Government Board, borrow, on the security of the district fund and general district rates or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable, moneys for the purpose of temporarily providing for expenses of private street works, and the powers of the urban authority to borrow under the Public Health Acts shall be available as if the execution of private street works under this Act were one of the purposes of the Public Health Act, 1875."

(b) If a rural authority, the order of the Local Government Board may invest them with the necessary borrowing power.

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The sections relating to borrowing (applicable alike to urban and rural councils) contained in the Public Health Act are 233—243, and they will be found set out in the Appendix.

It is obvious that a local authority should resort to the expedient of borrowing, wherever they do not propose to recover the whole of the expenses from the owners forthwith after the settling of the final apportionment.

Section 21 provides—

How a local authority are to deal with the expenses in their accounts.

"(1) The urban authority shall keep separate accounts of all moneys expended and recovered by them in the execution of the provisions of this Act relating to private street works.

(2) All moneys recovered by the urban authority under this Act in respect of street works shall be applied in repayment of moneys borrowed for the purpose of executing private street works, or if there is no such loan outstanding then in such manner as may be directed by the Local Government Board."

Section 15 provides that—

Authority may contribute towards the expenses.

"The urban authority, if they think fit, may at any time resolve to contribute the whole or a portion of the expenses of any private street works, and may pay the same out of the district fund or general district rate or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable."

The object of this section was no doubt to get over the difficulties presented by such cases as *Dryden* v. *Overseers of Putney* (*i*), and *Attorney-General* v. *Wandsworth*

(*i*) (1877), 1 Ex. D. 223; 34 L. T. 69; 40 J. P. 263.

District Board of Works (*j*), wherein it was held that it was compulsory upon a local authority to obtain payment of expenses, of the nature of private street works expenses, from the adjoining owners.

How far the authority can apportion the expenses on adjoining owners and others.

Having pointed out that the authority may, if they think fit, themselves contribute towards the expenses, we must now consider how far they can recover such expenses from the adjoining owners or other persons benefited.

The ground may be to some extent cleared by referring at once to three sections of the statute which either partially relieve, or entirely exempt, certain individuals and corporations.

(a) Special statutory exemptions.

(i.) Exemption from expenses of incumbent of church.

16. The incumbent or minister or trustee of any church, chapel, or place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor, shall not be liable to any expenses of private street works as the owner of such church, chapel, place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process, but the proportion of expenses in respect of which an exemption is allowed under this section shall be borne and paid by the urban authority.

Apparently, in a fit case, *e.g.*, where a church has no access to any particular street, the authority could, subject to objection being made by other owners to the adoption of this course, avoid the bearing of the share of the cost which would have been apportioned upon the premises so exempted, if they proceed upon the "benefit" basis under s. 10 and assess the benefit to the exempted premises as "*nil*."

(*j*) (1877), 6 Ch. D. 539; 46 L. J. Ch. 771.

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(ii.) Railways and canals abutting but not communicating with streets not to be chargeable with private street expenses.

22. No railway or canal company shall be deemed to be an owner or occupier for the purposes of this Act in respect of any land of such company upon which any street shall wholly or partially front or abut, and which shall at the time of the laying out of such street be used by such company solely as a part of their line of railway, canal, or siding, station, towing path, or works, and shall have no direct communication with such street; and the expenses incurred by the urban authority under the powers of this Act which, but for this provision, such company would be liable to pay, shall be repaid to the urban authority by the owners of the premises included in the apportionments, and in such proportion as shall be settled by the surveyor; and in the event of such company subsequently making a communication with such street they shall, notwithstanding such repayment as last aforesaid, pay to the urban authority the expenses which, but for the foregoing provision, such company would in in the first instance have been liable to pay, and the urban authority shall divide among the owners for the time being included in the apportionment the amount so paid by such company to the urban authority, less the costs and expenses attendant upon such division, in such proportion as shall be settled by the surveyor, whose decision shall be final and conclusive. This section shall not apply to any street existing at the date of the adoption of this Act.

This section, which applies only to streets not existing at the date of the adoption of the Act (*k*), will in many cases press hardly upon the other owners, and it will be noticed that in the event of any repayment the person to benefit will be the owner for the time being and not

(*k*) As to the liability of railways and canals in other cases see p. 56, *post*.

necessarily the person who bore the original burden; moreover there appears to be no means of questioning the decision of the surveyor as to the division of the sum repaid by the company.

(iii.) Protection of Conservators of the River Thames.

26. This Act shall not extend to prejudice or derogate from the estates, rights, and privileges of the Conservators of the River Thames, or render them liable to any charges or payments in respect of any of their works on or upon the shores of the River Thames.

(b) Liability of owners of premises apart from such special exemptions.

Apart from the special exemptions just dealt with, the liability to contribution depends upon the provisions of ss. 6, 9, and 10, and decisions upon them, or upon similar provisions in other statutes.

(The method of raising objections to an apportionment of expenses is dealt with later (*l*).)

Section 6 (1) of the Act provides that the expenses incurred by the authority in executing private street works shall be apportioned (subject as in the Act mentioned (*m*)) on the premises fronting, adjoining or abutting on the street or part of a street in respect of which private street works are carried out.

Section 6 (2) (b) and (c) provide respectively that the surveyor shall prepare an estimate of the probable expenses of the works, and also a provisional apportionment of the estimated expenses among the premises liable to be charged therewith under the Act, and the section then goes on to provide that such estimate and provisional apportionment shall comprise the particulars prescribed in Part I. of the Schedule to the Act, and further provides for their approval by the authority.

Section 9 (2) provides that the authority in the estimate may include a commission not exceeding five pounds per

(*l*) See chap. IV.

(*m*) *I.e.*, subject to s. 10, *infra*.

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centum (in addition to the estimated actual cost) in respect of surveys, superintendence and notices, such commission when received to be carried to the credit of the district fund.

Basis of apportionment.

Section 10 is the one actually providing for the manner of making the apportionment of expenses, and is as follows :—

10. In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining, or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises ; but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations ; (that is to say,)

(a) The greater or less degree of benefit to be derived by any premises from such works ;

(b) The amount and value of any work already done by the owners or occupiers of any such premises.

They may also, if they think just, include any premises which do not front, adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.

"Premises" and "owners."

Premises ; Owners.—It now becomes necessary to examine more closely the words and phrases used in the sections just referred to. First in order comes the word "premises" ; and, since the inquiry as to what premises

are within the scope of the Act involves the consideration of who is an "owner" within the Act, both points will be dealt with at the same time.

According to the definition contained in s. 4 of the Public Health Act, 1875, and therefore applicable to this Act, the word *premises* is to "include messuages, buildings, lands, easements and hereditaments of any tenure." This wide definition has been somewhat narrowed by judicial decisions upon the Public Health Acts, and similarly worded statutes (*e.g.*, the Metropolis Management Acts). The combined effect of ss. 13 and 14 of this Act and s. 257 of the Public Health Act, 1875, is that the statute has no application to premises which have no "owner," and *owner* is defined by s. 4 of the Public Health Act, 1875, as meaning (*not* including)—

> "the person for the time being receiving the rack rent of the lands or premises, in connection with which the word is used, whether on his own account or as agent or trustee for any person, or who would so receive the same if such lands or premises were let at a rack rent;"

and rack rent—

> "means rent which is not less than two-thirds of the net annual value of the property out of which the rent arises" (*n*).

Now some lands and premises are for all time physically and legally incapable of profitable and beneficial enjoyment (*o*); in such a case there can be no rack rent and therefore no owner, and therefore the Act does not apply. In the words of Lord Watson, "the person vested with the property of heritable subjects which have been placed *extra commercium*, or are subject in perpetuity

(*n*) For the meaning of "net annual value," see the definition *in extenso*, on p. 116.

(*o*) *Fulham* v. *Minter* (1901), 1 K. B. 501; 70 L. J. K. B. 348; 84 L. T. 49; 49 W. R. 415; 65 J. P. 180.

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to the burden of a public right, which deprives him of their beneficial use, is not an owner of land within the meaning of the 77th section of the Act of 1862" (Metropolis Management Act) (*p*). The following decisions illustrate the working of this exception:—

Churches, etc.

(a) A *church* was held not to fall within the scope of the Metropolis Management Acts (*q*). Now, however, churches and chapels are specially provided for by s. 16 (p. 51).

Railways and canals.

(b) Speaking generally, railway and canal companies were liable to an apportionment in respect of any of their premises which abutted upon the street in question, whether such premises were on the same level as (*r*), or higher, or lower than the street; thus they were held to be "owners of premises" in respect of the retaining walls of a cutting (*s*) and of an embankment (*t*), where such walls formed the boundary of a street. In one case (*u*), however, property of a railway company was held to be excluded from the operation of similar Acts: it was sought to make the company liable in respect of their ownership of the parapets of a bridge built and maintained by them in order to carry a highway across their line, which at the spot ran in a deep cutting. The House of Lords, whilst approving the above-mentioned cases, decided in favour of the company on the ground that these parapet walls were not necessary for the construction of the line and the protection of the traffic upon it, and did not in fact form any part of the works from which the company was deriving profit.

(*p*) *G. E. Rail.* v. *Hackney Board of Works* (1883), 8 A. C. 687; 52 L. J. M. C. 105; 49 L. T. 509; 31 W. R. 769; 48 J. P. 52.

(*q*) *Angell* v. *Paddington* (1868), L. R. 3 Q. B. 714; 37 L. J. M. C. 171; 32 J. P. 742.

(*r*) *R.* v. *Newport Local Board* (1863), 32 L. J. M. C. 97; 11 W. R. 263.

(*s*) *L. & N. W. Rail.* v. *St. Pancras* (1868), 17 L. T. (N.S.) 654.

(*t*) *Higgins* v. *Harding* (1873), L. R. 8 Q. B. 7; 42 L. J. M. C. 31; 27 L. T. 483; 21 W. R. 191; 37 J. P. 677.

(*u*) *G. E. Rail.* v. *Hackney Board of Works, supra.*

These decisions as to railway and canal companies are applicable to the Private Street Works Act, except in the case of a street which did not exist at the date of the adoption of the Act: see s. 22, *supra*, at p. 52.

Cross streets.

(c) It has been decided that the proprietor of the soil of a cross street running into the street to be paved is not an owner liable to be charged in respect of the abutment of such cross street, provided that it has been dedicated to the public (*x*). He is, however, liable if he has merely laid out such street as a private road, for it is still in his power to resume possession, or charge his tenants a rent for using it (*y*).

Schools.

(d) *Schools* are "premises" within the meaning of the Act, whether they are board schools (*z*), or are vested in trustees (*a*): in the latter case the trustees are the "owners."

Cemeteries.

(e) A *cemetery* belonging to an incorporated company was held liable for paving expenses under the Metropolis Management Acts (*b*).

Recreation grounds.

(f) A recreation and pleasure ground, the absolute property of a vestry, was ruled to be not incapable of becoming a source of profit (*e.g.*, from the sale of refreshments, etc.), and therefore liable for paving expenses (*c*); and a similar decision was given where

(*x*) *Plumstead Board of Works* v. *British Land Co.* (1875), L. R. 10 Q. B. 203; 44 L. J. Q. B. 38; 32 L. T. 94; 23 W. R. 634; 39 J. P. 376.

(*y*) *Pound and Lord Northbrook* v. *Plumstead Board of Works* (1872), L. R. 7 Q. B. 183; 41 L. J. M. C. 51; 25 L. T. 461; 20 W. R. 177; 36 J. P. 468.

(*z*) *London School Board* v. *St. Mary, Islington* (1876), 1 Q. B. D. 65; 45 L. J. M. C. 1; 33 L. T. 504; 24 W. R. 137; 40 J. P. 310.

(*a*) *Bowditch* v. *Wakefield Local Board* (1871), L. R. 6 Q. B. 567; 40 L. J. M. C. 214; 25 L. T. 88; 36 J. P. 197; *Hornsey Urban District Council* v. *Smith* (1897), 1 Ch. 843; 76 L. T. 431; 45 W. R. 581; 61 J. P. 311.

(*b*) *St. Giles, Camberwell* v. *London Cemetery Co.* (1894), 1 Q. B. 699; 63 L. J. M. C. 74; 70 L. T. 734; 42 W. R. 446; 58 J. P. 382.

(*c*) *Fulham Vestry* v. *Minter* (1901), 1 K. B. 501; 70 L. J. K. B. 348; 84 L. T. 49; 49 W. R. 415; 65 J. P. 180.

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a vestry had purchased for the residue of a term the centre portion of a square to be used as a pleasure ground (*d*).

Commons.

(g) The lord of a manor has been held liable to contribute to paving expenses in respect of land which had originally been common, but had become vested in him by an Inclosure Act subject (as regarded the surface) to the rights of certain cottagers (*e*).

The Crown.

It is a principle of the common law that statutes do not impose pecuniary burdens upon Crown property unless the Crown is expressly named, or has by necessary implication agreed to be bound. Thus where there is an ownership and occupation solely for and on behalf of the Crown, the premises are outside the scope of the present or similar statutes. This principle has been held to apply to premises occupied by a volunteer corps as store-houses, mess-room, etc., and vested in the commanding officer for the time being of the corps (*f*); in this case the court spoke of ownership *and* occupation: it would seem, however, that the exemption ought to attach, wherever the Crown is the statutory "owner" of the premises, no matter who occupies them, for part of the burden must in any case fall on the owner.

"Owner."

Owner.—On p. 55, *ante*, the reader will find the statutory definition of the word "owner": the test of liability is, "who receives the rack rent of the premises, or who would receive it in the event of the premises being let at a rack rent?" It must be remembered that some premises cannot be let at a rack rent (p. 55), and have therefore no owner within the meaning of the statute.

(*d*) *St. Mary, Islington* v. *Cobbett* (1894), 64 L. J. M. C. 36; 71 L. T. 573; 43 W. R. 44; 58 J. P. 716.

(*e*) *Re* Christ Church Enclosure Act, *Meyrick* v. *Attorney-General* (1894), 3 Ch. 209; 63 L. J. Ch. 657; 71 L. T. 122; 42 W. R. 614; 58 J. P. 556.

(*f*) *Hornsey Urban District Council* v. *Hennell* (1902), 2 K. B. 73; 18 T. L. R. 512.

Agents, etc.

The reader will notice that agents (*h*) and trustees are included in the liability for the expenses of private street works: it makes no difference that the agent has been appointed since the final apportionment, and has not in fact received any rents (*i*), or that the trustee holds the premises for public purposes, *e.g.*, a school (*k*). A receiver appointed by the court is not within the terms of the definition (*l*), but it includes a second mortgagee who has taken possession and collects the rent (*m*).

Lessees.

Difficulties have arisen in determining who is the "owner" of premises where a yearly tenant has sublet. The rule appears to be that such tenant becomes the owner (*n*), unless he merely sublets the whole of the demised premises at exactly the same rent as he himself pays, in which case the freeholder is still in receipt of the "full" rack rent and is to be regarded as the "owner" (*o*).

In the case of a lease, or of an agreement to grant a lease, for a long term of years, the fact that the freeholder is receiving a substantial ground rent is not sufficient to constitute him the "owner" (*p*). Thus a builder who is in occupation of land under such a lease or agreement is the "owner" of the premises (*p*),

(*h*) See *Broadbent* v. *Shepherd* (1901), 2 K. B. 274; 70 L. J. K. B. 628: 84 L. T. 844; 49 W. R. 521; 65 J. P. 499.

(*i*) *St. Helens* v. *Kirkham* (1886), 16 Q. B. D. 403; 34 W. R. 440; 50 J. P. 647.

(*k*) *Bowditch* v. *Wakefield Local Board* (1871), L. R. 6 Q. B. 567; 40 L. J. M. C. 214; 25 L. T. 88; 36 J. P. 197.

(*l*) *Bacup Corporation* v. *Smith* (1890), 44 C. D. 395; 59 L. J. Ch. 518; 63 L. T. 195; 38 W. R. 697.

(*m*) *Tottenham Local Board* v. *Williamson* (1893), 62 L. J. Q. B. 322; 69 L. T. 51; 57 J. P. 614; 9 T. L. R. 372.

(*n*) *Cook* v. *Montague* (1872), L. R. 7 Q. B. 418; 41 L. J. M. C. 149; 37 J. P. 53.

(*o*) *Bowen* v. *James* (1882), 10 L. R. Ir. 26; *Walford* v. *Hackney* (1894), 11 T. L. R. 17; 43 W. R. 113.

(*p*) *Poplar Board of Works* v. *Lowe* (1874), 29 L. T. 915; *Caudwell* v. *Hanson* (1872), L. R. 7 Q. B. 55; 41 L. J. M. C. 8; 25 L. T. 525; 20 W. R. 202; 36 J. P. 470.

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unless there be some provision in the agreement stipulating that he is to have no interest in the premises until the happening of some event which has not yet occurred, *e.g.*, completion of the building (*q*).

Where a lessee for a long term parts with the whole of such term (less a few days) to a third person at a rent which is not a rack rent, the assignee is the only person who has it in his power during the currency of the term to let the premises at a rack rent, and he is to be regarded as the "owner," although he may see fit to occupy them himself (*r*).

Fronting, adjoining, or abutting.—The liability attaches although there may not be in fact any means of access to the street from the premises in question. Thus a railway company were held liable in respect of their lines, which were 18 feet below the level of a street bounded by the retaining wall of a cutting (*s*); and so was the owner of a garden which was 5 feet above the level of the footpath to be paved and separated from it by a 12-foot wall (*t*). It was pointed out in the latter case that, if the wall had not belonged to the owner of the garden, or a strip of land had intervened (so that he had no *right* of access), he would not have been liable. So, too, where a man owned a strip of land alongside a street, 265 feet long, and 4 inches wide, upon which he had covenanted to maintain a fence for ever, he was held liable for his share of paving expenses (*u*).

In all the above cases the premises in question were in actual contact with the street; and, if the words

(*q*) *Lady Holland* v. *Kensington Vestry* (1878), L. R. 2 C. P. 565; 36 L. J. M. C. 105; 31 J. P. 758.

(*r*) *Truman, Hanbury and Buxton, Ld.* v. *Kerslake* (1894), 2 Q. B. 774; 63 L. J. M. C. 222; 43 W. R. 111; 58 J. P. 766.

(*s*) *L. & N. W. Rail.* v. *St. Pancras* (1868), 17 L. T. 654.

(*t*) *Newport Urban Sanitary Authority* v. *Graham* (1883), 9 Q. B. D. 183; 47 L. T. 98; 31 W. R. 121; 47 J. P. 133.

(*u*) *Williams* v. *Wandsworth Board of Works* (1884), 13 Q. B. D. 211; 53 L. J. M. C. 187; 32 W. R. 908; 48 J. P. 439.

"front," "abut," and "adjoin" are to be construed according to their strict meaning, it would seem that such actual contact is a necessary condition of liability under s. 6 (1). In one case (*x*), however, premises were held liable where a narrow beck ran between them and the street to be paved; and in a later case it was suggested that possibly the word "adjoin" might be stretched so far as to include premises standing behind the houses actually fronting the street, if access was obtained to them by a roadway leading out of the street through an opening in the intervening houses (*y*).

It would appear that the concluding portion of s. 10 is due to these two cases, and in view of the enactment of a definite provision for such cases, the authors submit that the words "fronting," etc., must now be construed strictly, and that premises not in actual contact with the street, or with such part as is being dealt with, can only be included on the ground of "having access."

The correctness, or otherwise, of the view put forward above will be of especial importance in two cases: (1) Where an existing road needs repairs to one footpath only: assuming that the opinion expressed on p. 42 is incorrect, and that such footpath can be treated by itself as a "part of a street," the liability of frontagers on the opposite side will depend (apart from the concluding words of s. 10, as to which see p. 62) upon whether the intervening roadway prevents their being regarded as fronting, etc., on the part of the street to be repaired. (2) Where a strip (whether for a footway or carriageway) is added to an old highway repairable by the public, in which case the new strip may be itself a "street," the same point arises. Under such circumstances it was held in construing the Metropolis Management Acts that

(*x*) *Wakefield Local Board* v. *Lee* (1867), 1 Ex. D. 336; 35 L. T. 481; 41 J. P. 54.

(*y*) *Lightbound* v. *Higher Bebington Local Board* (1886), 16 Q. B. D. 577; 55 L. J. M. C. 94; 53 L. T. 812; 34 W. R. 219; 50 J. P. 500.

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the expenses must be apportioned only on the premises actually abutting on the added strip (*z*).

It must be remembered that cross streets abut (to the extent of their width) upon a street into which they lead (p. 57), and also that the premises at the end of a *cul-de-sac* "abut" thereon as well as those along its sides (*a*).

Access to which is obtained from the street through a court, passage or otherwise.—These words have not yet been considered by the court; and it is therefore impossible to say with certainty how far they empower an authority to include in their apportionment premises not fronting, adjoining, or abutting upon the particular length of street in respect of which the expenses are being incurred. In at least one instance, however, an authority has, in reliance upon this clause, and without objection being made, included in an apportionment premises abutting upon a street at a point outside the limits of the proposed work.

The authors submit with deference that such a course cannot be justified. Applying the ordinary rule of construction, "otherwise" must imply some means of access *ejusdem generis* with court or passage, and can hardly include the ordinary means of access by a door or garden gate opening direct into the street. The provision seems to be based upon the suggestions of the Court in *Lightbound's Case*, and to be intended to apply to premises lying back from a street, yet having their proper access from such street, and benefited by works carried out in it.

Further difficulty is caused by the fact that the language of the statute changes suddenly from "the street or part

(*z*) *White* v. *Fulham Vestry* (1896), 74 L. T. 425; 60 J. P. 327; *Property Ex. Co.* v. *Wandsworth* (1902), 2 K. B. 61, 86 L. T. 481; see, too, *Richards* v. *Kessick* (1888), 52 J. P. 756; 57 L. J. M. C. 48; 59 L. T. 318 (under s. 150 of the P. H. Act).

(*a*) *Manchester* v. *Chapman* (1868), 37 L. J. M. C. 173; 18 L. T. 640; 16 W. R. 974; 32 J. P. 582; *Sheffield* v. *Fulham Board of Works* (1876), 1 Ex. D. 395.

of a street" to "the street." If this distinction is insisted upon, the result will be that, if the northern end of a street is to be paved, premises having access to the street by an alley leading into the southern half can be made liable as having access to "the street," whilst houses actually abutting upon the street (but not on "the part of the street"), on either side of the entrance to the alley, will be exempt.

In the view of the authors, the intention of the framers of the statute was that every owner of premises should be liable to contribute towards the expense of paving the street, or portion of a street, from which he derives most benefit, and not that he should be called upon to pay first for paving the part of a street upon which his property abuts, and then for another part of the same street on the ground of benefit. If this be correct, the words "from the street" must be read as equivalent to "street or part of a street," and will apply only to cases where the alley or other means of access leads into the street within the limits of the work.

CHAPTER IV.

PROCEDURE.

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I. Preliminary.

The first resolution.

(1) *The first resolution.*—When an urban authority who have adopted the Private Street Works Act, or a rural authority who have been invested by the Local Government Board with power to put the Act in force within their district, consider it desirable to carry out some "private street works" contemplated by the Act, the first step is to pass a formal resolution that the works in question shall be done (s. 6 (1)).

The statute does not provide for any particular notice of the intention to move the resolution being given to the various members of the authority. Presumably, therefore, it will be sufficient to give the notice required by the standing orders (if any) of the authority, or ordinarily given to members in the case of non-routine business. The resolution should specify clearly the street or streets affected by it and the nature of the proposed works, and should provide for the necessary instructions being given to the surveyor to prepare the various documents required by s. 6 (2). If it is intended to apportion the expense otherwise than according to frontage, or to include in the apportionment premises not actually fronting, adjoining, or abutting on the street or part of a street in question, the resolution should contain a provision to this effect (s. 10).

Its form.

A specimen form of resolution will be found in the Appendix.

Care must be taken that, in passing this or any other statutory resolution, the proper formalities are observed (see p. 8, *ante*).

The surveyor's duties.

(2) *The surveyor's duties.*—The authority having formally resolved to carry out works in respect of one or more street or streets, or part or parts thereof, the surveyor must proceed to prepare in respect of each street, or part of a street, the following papers for the approval of the authority (s. 6 (2), sched. pt. I) :—

Specification.

(i.) A specification of the works referred to in the resolution, with plans and sections (if applicable). The specifications must describe generally the works and things to be done, and in the case of structural works must specify as far as may be the foundation, form, material, and dimensions thereof. The plans and sections must show the constructive character of the work, and the connections (if any) with existing streets, sewers, or other works, and the lines and levels of the works, subject to such limits of deviation (if any) as shall be indicated on the plans and sections respectively.

Estimate.

(ii.) An estimate showing the particulars of the probable cost of the whole works, including the commission (not exceeding 5 per cent.), which may be added to the estimated cost, in respect of surveys, superintendence and notices (s. 9 (2)).

Provisional apportionment.

(iii.) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under this Act. It must show in detail the amounts charged on the respective premises, the names of the respective owners or reputed owners (*a*), and also whether the apportionment is made according to the frontage of the respective premises or not, and the measurements of

(*a*) By s. 306 of the Public Health Act occupiers of premises can be compelled to disclose the owners' names.

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the frontages, and the other considerations (if any) on which the apportionment is based.

As to what premises may be included, who are owners of premises within the meaning of the Act, and the principles upon which the apportionment must be made, the reader is referred to the previous chapter.

A suggested form of apportionment will be found in the Appendix.

Resolution of approval.

(3) *The second resolution.*—The necessary plans, etc., having been prepared, notice must be given to the various members of the authority of the day upon which they are to be considered. The Act contains no special provisions as to such notice.

The authority may make such modifications or additions as may seem desirable, and a formal resolution of approval must be passed (s. 6 (2)).

For a form of resolution see Appendix, No. 10.

Publication and notice.

(4) *Publication and notice of the resolution.*—The resolution of approval must next be published in the manner prescribed, *i.e.*, by inserting the same "once in each of two successive weeks (*aa*) in some local newspaper circulating within the district, and also by publicly posting the same in, or near, the street to which it relates (s. 6 (3), sch. pt. II.) once at least in each of three successive weeks."

Inspection of plans, etc.

For the period of one month (*i.e.*, calendar month) from the date of such first publication the approved specifications, plans, and sections (if any), estimates, and provisional apportionments (or copies thereof certified by the surveyor) must be kept deposited at the offices of the authority (*b*) for the purpose of inspection at all reasonable times (s. 6 (3)). It is desirable that all

(*aa*) The insertions need not be a whole week apart: *Aberdeen, City of*, v. *Watt* (1901), 3 F. 787.

(*b*) Where the surveyor's office is apart from the general offices of the authority, deposit of plans at his office will presumably be sufficient.

notices and advertisements of the resolution should draw attention to the opportunities of inspection thus given.

For form of notice see Appendix, No. 11.

Mode of service.

Within seven days of the first publication a copy of the resolution must be served on every owner of premises shown as liable to be charged in the provisional apportionment. Upon the proper service of these copies depends the power of the authority to ultimately recover the expenses incurred by them, and it is therefore necessary to consider here the provisions of s. 267 of the Public Health Act, 1875, as to service. By this section any notice required to be given to the owner of any premises may be addressed by the description of the "owner" of the premises (naming them) in respect of which the notice is given, without further name or description: and the section also provides that a notice may be served by delivering it to, or at the residence of, the person to whom it is addressed; or, where it is addressed to the "owner" of premises, by delivering it, or a true copy thereof, to some person on the premises, or, if there is no person on the premises who can be so served, by fixing the same on some conspicuous part of the premises. Advantage may be taken of this last provision even though the real owner's residence be known, and the notice be addressed to him (by name) "or other the owner" (*c*).

As a further alternative a notice may be served by post by a prepaid letter, and shall then be deemed to have been served at the time when the letter would be delivered in the ordinary course of post, and in proving such service it will be sufficient to prove that such letter was properly addressed and stamped and put into the post.

The effect of these provisions is that the authority can absolutely protect themselves if all the notices are

(*c*) *Woodford Urban District Council* v. *Henwood* (1900), 64 J. P. 148; *Butler* v. *Gravesend Urban Authority* (1894), 58 J. P. 446.

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addressed "to A. B. (*i.e., the reputed owner*), or other the owner of the premises known as, *etc.*," and served upon the premises in the prescribed manner, according as they are occupied or not. This course should be invariably followed: duplicates can be served upon the reputed owners if it be desired to do so as a matter of courtesy.

Whatever mode of service be adopted, the person delivering or posting the notice should make some note or memorandum, with which he may in the future refresh his memory, when formal proof of service becomes necessary.

II. OBJECTIONS, DETERMINATION OF OBJECTIONS, AND APPEALS.

Objections.

Under this head we propose to deal with the various grounds upon which an aggrieved owner can contest the proposals of the authority, and the mode in which such objections must be taken and determined.

It was, as has been pointed out in chapter I., the chief defect in the corresponding provisions of the Public Health Act, 1875, that the authority were liable to be met at the last moment by some fatal objection, which prevented them recovering from the property owners the money which they had already expended. The present statute to a great extent, though not entirely, gets rid of this difficulty. Section 7 provides for the raising and determination by justices of certain objections upon the provisional apportionment, before any expense is incurred; and s. 12 (2) provides for the raising of others upon the final apportionment. There are, however, one or two possible grounds of objection as to which no provision is made.

We propose to first discuss objections under s. 7, and then those for which no provision is made. Objections under s. 12 (2) can be more conveniently treated at a later stage (see p. 80).

Objections under s. 7.

1. By s. 7, "any (*d*) owner of any premises shown in a provisional apportionment as liable to be charged" may object to the authority's proposals on one or more of the grounds there set out; and by s. 8 (2), if he does not raise such objection at the time and in the manner provided, he waives all right to rely thereon (*e*) (provided, of course, that a copy of the resolution of approval has been duly served so as to affect him with notice of the proposals (*f*)).

Who can object.

It has been suggested that no owner can be heard as an objector unless his or her name appears in the apportionment: the more natural meaning of the section appears to be that any one, who is in fact an owner of premises which are included in the apportionment, may give notice of objection, whether or not he or she is named in the apportionment as the reputed owner, or has been served with a copy of the resolution.

Notice of objections

An owner, wishing to object under s. 7, must do so within one month (*g*) of the first publication of the resolution approving the specifications, etc., by serving upon the authority a written notice (*h*) specifying the ground or grounds upon which he relies.

The following are the grounds of objection open to an owner under this section:—

(a) That an alleged street or part of a street is not, or does not form part of, a street within the meaning of this Act. As to this, see p. 12, *ante*.

(b) That a street or part of a street is (in whole or in

(*d*) Joint tenants or tenants in common may object through one of their number authorised in writing under the hands of a majority of them.

(*e*) And see *Woodford Urban District Council* v. *Henwood* (1900), 64 J. P. 148.

(*f*) As to the position of an owner who has not been duly served with the notice, see *post*, p. 79.

(*g*) *I.e.*, calendar month.

(*h*) Presumably it should be addressed to the authority (not to the chairman, as is sometimes done), and left at their office, or sent by prepaid letter.

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part) a highway repairable by the inhabitants at large. As to this, see p. 15, *ante*.

With regard to this objection it is necessary to consider how far the authority and an objector are bound by an earlier finding of a court of summary jurisdiction, that the street in question is, or is not, a highway repairable by the inhabitants at large. The argument in favour of such earlier finding being conclusive may be put in two forms: (i.) that it is a judgment *in rem*, the adjudication of a competent tribunal upon the *status* of the street in question, and therefore final and conclusive as against all the world; or (ii.) that, being a judgment *inter partes*, it creates an estoppel between the parties to it and their respective successors in title.

The validity of this argument has been considered in two cases, in the first of which the earlier decision had been given in proceedings under s. 150 of the Public Health Act, whilst in the second it had been given in proceedings under a Local Act identical in its terms with the Private Street Works Act.

In the first-mentioned case (*i*) Lord SELBORNE, sitting in the Court of Appeal, laid down that: (i.) there had been no proceeding *in rem*, or adjudication upon *status*; (ii.) the order of a court of summary jurisdiction cannot operate between the parties as an estoppel, (a) as to any matter as to which that court had no authority to adjudicate directly and immediately between the parties, (b) as to any matter incidentally coming in question, as to which a finding, if held to be conclusive between the parties, would operate in prejudice of the rights of others not parties to the proceeding. He then went on to hold that there was in that particular case no estoppel, for the justices upon the earlier hearing had, under s. 150, no jurisdiction to adjudicate directly or immediately upon the *status* of the street—their jurisdiction being merely

(*i*) *R.* v. *Hutchins* (1881), 6 Q. B. D. 300; 50 L. J. M. C. 35; 44 L. T. 364; 29 W. R. 724; 45 J. P. 504.

to make, or refuse, an order for payment of apportioned expenses; and that the question was at most one "incidentally cognisable" by them, the decision of which might if held to be conclusive, prejudice other persons.

In the later case (*k*) it was argued that the wording of the sections in the Local Act, corresponding to ss. 7, 8 of the Private Street Works Act, had now given the justices authority to adjudicate directly upon the *status* of the street, and that their finding created an estoppel. A Divisional Court has decided against this contention, holding that the true jurisdiction of the justices is confined to quashing, amending, or confirming the proposals of the authority, and that the effect of the sections referred to was merely to enable and compel owners to raise certain specified objections at a preliminary stage of the proceedings.

Doubts have been thrown upon the correctness of this ruling, and the reader will therefore do well to look for the decision of the Court of Appeal, to which (it is believed) the case is to be taken. As the law stands at present, however, a finding of justices, either under s. 150 of the Public Health Act, or under ss. 7, 8 of the Private Street Works Act, may be contested on the same, or additional, evidence in subsequent proceedings before the justices.

(c) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimates. As to this, see chapter II. and chapter IV., part I. This sub-section does not include errors in the apportionment.

(d) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive. The words "insufficient" and "unreasonable" have been judicially interpreted (*l*). *Insufficient* points

(*k*) *Wakefield Corporation* v. *Cooke* (1902), 1 K. B. 188; 18 T. L. R. 193; see also *Scott* v. *Lowe* (1902), 86 L. T. 421.

(*l*) *Mansfield Corporation* v. *Butterworth* (1898), 2 Q. B. 274; 62 J. P. 500; 67 L. J. Q. B. 709; 78 L. T. 527; 46 W. R. 650; *Sheffield Corporation* v. *Alexander* (1895), 64 L. J. M. C. 44; 72 L. T. 242.

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exclusively to a comparison between the work to be done and the means of effecting it. A scheme is not insufficient merely because a more comprehensive one would be an advantage to the neighbourhood in general: thus a sewering proposal might be held insufficient on the ground that the proposed pipes were of too small a diameter, but not on the ground that the street in question also needed paving or widening. "Reasonable" is a much wider term, and includes the consideration of whether the scheme is reasonable as a whole or not—*e.g.*, whether any sewer at all is required. It would appear that under this head an owner might object to the propriety of the proposals on such general grounds as that the work was not needed; and (*semble*) this sub-section might enable him to take the point that the street has already been sewered to the satisfaction of the authority. See p. 43, *ante*, and p. 76, *post*.

(e) That any premises ought to be excluded from or inserted in the provisional apportionment. As to this see chapter III., pp. 51—63. This sub-section enables an owner to procure the insertion of premises which have been omitted in error, and so reduce the proportion due from himself and all other owners. It is submitted, however, that it applies only to premises wrongly inserted or omitted, having regard to the basis upon which the authority have determined to make the apportionment; and that it does not enable an owner (or the justices) to question the decision of the authority to include or omit such premises as in fact have access from the street, but do not actually abut on it.

(f) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection, or (where the provisional apportionment is made with regard to other considerations than frontage as thereinafter provided (*m*)), in respect of the degree of benefit to be derived by any persons, or the amount or

(*m*) See p. 54.

value of any work already done by the owner or occupier of any premises. Apparently there is no power to object that the apportionment ought to be made on the basis of frontage alone and is not, or *vice versâ* (*n*).

Errors of measurement or calculation are contemplated by the first part of the sub-section, and such errors must be specified. It will also be desirable (although perhaps not necessary) in other cases to give some details, *e.g.*, to specify the work claimed to have been done and its value, and the persons alleged to be benefited.

Determination of objections.

Determination of objections under s. 7.—The tribunal for determining such objections is "a" court of summary jurisdiction, *i.e.*, presumably the court within whose district the street is situated.

If no objection is lodged within the prescribed period, there is of course no need to go before the justices. Assuming, however, that objections are raised, the authority should consider whether any one of them is necessarily fatal to the scheme, in which case further expense can be avoided by allowing the matter to drop. If the objections appear to be well founded, but not of a fatal character, and can be met by amendments under s. 11, the authority might, after the expiration of the month, make the required alterations, and give fresh notices to any owners affected thereby: in this case, if no objection is lodged against the amended proposals, a hearing before the justices will be rendered unnecessary. If the authority determine to proceed, they must take the initiative by applying to the court to fix a day for the hearing. Such application may be made at any time after the expiration of the period allowed for lodging objections (s. 8 (1)).

No summons or information is required, but a notice of the time and place appointed must be published, and

(*n*) As to how (if at all) such an objection may be taken, see p. 76, *post*.

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a copy served upon each of the objectors. The statute prescribes no mode of publication; it is not unusual for the justices to embody in their order some directions on the point, and, if this is not done, part II. of the schedule should be complied with. The copies of the notice should be addressed to the objectors by name, and served in accordance with the provisions of s. 267 of the Public Health Act (see p. 67).

The hearing.

The hearing.—At the hearing the burden of proof is upon the authority (*o*), who must be prepared to prove the adoption of the Act, and the passing of the resolution of approval. With regard to the latter, it would appear that no objection can be raised unless notice has been given under s. 7 (c). With regard to the former, it will, in the case of an urban council, as a rule, be sufficient (s. 3 (4)) for the clerk to produce a copy of the newspaper containing the advertisement. In the case of a rural council he may produce a copy of the *Gazette* containing the order of the Local Government Board, or a copy of the order purporting to be printed by the Government Printer, or under the superintendence of H.M.'s Stationery Office (*p*). The authority must then proceed to call evidence to meet the various objections raised, and it will, of course, be convenient to begin with such objections (*e.g.*, under s. 7 (a) and (b)) as go to the root of the whole scheme, and to conclude with those under s. 7 (f).

The justices have power, at the request of either party, to quash, in whole or in part, or to amend, the resolution, the plans, the sections, the estimates, and the apportionment, or any of them (s. 8 (1)). If any amendments are made, the authority can carry out the amended scheme without it being necessary for them to begin their proceedings *de novo*, or to pass a resolution approving the

(*o*) *Rishton* v. *Haslingden Corporation* (1898), 1 Q. B. 294; 67 L. J. Q. B. 387; 77 L. T. 620; 62 J. P. 85.

(*p*) Documentary Evidence Act, 1868, s. 2; Local Government Board Act, 1871, s. 5; and Documentary Evidence Act, 1882, s. 2. See *Huggins* v. *Ward* (1873), L. R. 8 Q. B. 521.

amended scheme (*q*). Where, however, any material amendment is made, it is desirable (*r*) that the justices should exercise the power given them by s. 8 (1), and adjourn in order that further notices may be given to all persons affected, for in many cases an owner, who was content with the original scheme, might desire to contest the amended one. Still, the question of adjournment is one for the discretion of the justices, and the Court will treat their decision upon the point as final.

Costs.

The costs are in the discretion of the justices (s. 8 (3)): if they are given against the authority, they must be defrayed as provided for by s. 23 (see p. 48, *ante*), *i.e.*, they must not be added to the expenses of the scheme, and thus apportioned upon the owners. Where costs are awarded to the authority, the justices have power to direct the authority to bear such costs in the first instance, and apportion them as part of the expenses upon the objectors' premises in such proportions as may appear just.

Appeals: by special case,

Appeals, etc. (*s*).—Section 8 expressly empowers the justices to state a special case in accordance with the provisions of the Summary Jurisdiction Acts.

to sessions.

Section 269 of the Public Health Act, 1875, gives a right of appeal to quarter sessions "where any person deems himself aggrieved by any . . . order, conviction, judgment, or determination of, or by any matter or thing done by, any court of summary jurisdiction." The authors submit that the combined effect of this section and s. 1 of the present statute is to give a right of appeal against decisions of justices both upon objections under s. 7 or s. 12, and in summary proceedings by an authority for the recovery of expenses. The authority, as well as an owner, appear to have a right of appeal: the general rule is that in criminal matters a complainant is not a

(*q*) *Twickenham Urban District Council* v. *Munton* (1899), 2 Ch. 603; 68 L. J. Ch. 601; 81 L. T. 136; 47 W. R. 660.

(*r*) *Ibid.*, *per* Lord LINDLEY.

(*s*) The practice and procedure upon special cases and appeals will be found fully dealt with in the authors' work on "Appeals from Justices."

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"person aggrieved"; but proceedings under the present statute are not criminal (*ss*).

Objections under s. 12.

2. Objections under s. 12 (2) to the final apportionment (as to which see p. 80) are to be determined in the same manner as those under s. 7, and there will be the same right of appeal.

Objections not provided for.

3. As pointed out previously, there are certain objections which an owner may desire to raise, but which are not specifically provided for by the Act. Three possible grounds of complaint may be suggested :—

(a) That the authority have no power to charge the owners with sewering expenses, inasmuch as the street in question has been already sewered to their satisfaction (see p. 43, *ante*).

(b) That the authority have wrongly decided to adopt, or not to adopt, the benefit "basis" of apportionment, or have not considered the question at all.

(c) That the authority have amended a provisional apportionment to his prejudice without giving him an opportunity of objecting before the justices (see p. 80).

It is not easy to say what opportunity an owner will have of taking these objections.

(a) With regard to (a), this objection scarcely seems to come within s. 7, for it is a question not of reasonableness, but of want of jurisdiction, and as such it will apparently afford a good defence, when the authority proceed to enforce payment. Nevertheless an owner would be well advised to attempt to raise the point upon an objection under this head; for, if it were well founded, the authority would hesitate to go on with the probability of failing eventually to recover any of their expenses; and in *Rishton* v. *Haslingden* (*supra*, p. 74) the court, on a special case, considered an objection of this character.

(*ss*) See *Southwark, &c., Co.* v. *Hampton U. C.* (1899), 1 Q. B. 273; 68 L. J. Q. B. 207; 79 L. T. 512; 63 J. P. 100; 15 T. L. R. 95: in *R.* v. *Hutchins* (1880), 5 Q. B. D. 353; 49 L. J. M. C. 64; 42 L. T. 766; 44 J. P. 522; the Court assumed the existence of such a right.

(b) In the authors' opinion, this point cannot be raised before the justices under s. 7, and clearly it would form no defence when the authority seek to enforce payment. The only (if any) way of raising it will therefore be an appeal to the Local Government Board.

(c) Here also the only remedy (if any) will be an appeal to the Local Government Board.

Memorial to the Local Government Board.

It is therefore now necessary to consider s. 268 of the Public Health Act, 1875, and its applicability to the objections which we are considering. That section provides that—

> "Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the local authority; the Local Government Board may make such order in the matter as to the said Board may seem equitable, and the order so made shall be binding and conclusive on all parties.
>
> "Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it thinks fit, by its order, direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him."

The words "the decision of the local authority"

raise a difficulty. In the leading case (*t*) as to the effect of s. 268 upon s. 150, the Court of Appeal held that there is no decision within the meaning of s. 268 until the time arrives at which the authority decide whether the amount due from an owner shall be recovered in a summary manner, or shall be declared to be a private improvement expense. It was contended that there had been two earlier "decisions," one when the authority called upon the owners to do the work, and another when notice of apportionment was served: the court disposed of these contentions by saying that the first was not a decision, for it did not commit the authority in any way to the execution of the specified works, and that the second was only a notice by the surveyor. In view of the different procedure under the present statute, it may well be argued that the resolution approving the plans, etc., is a "decision" within the meaning of the section. On the whole, however, the authors incline to the view that the case cited above is applicable to the present Act, and that the right of appeal does not arise until the final decision of the authority as to the method to be adopted for recovering the expenses, notice of which decision will be conveyed to the owners by a demand for payment, or issue of process.

The powers of the Local Government Board on such an appeal are very wide. In the words of BRETT, L.J. (*u*), they "have power to inquire into every circumstance, however remote, which could reasonably determine the question whether it was inequitable or not that a particular sum should be paid." It would seem, therefore, that, if an owner chooses to do so, he can appeal to the Local Government Board upon either of the two grounds, (b) or (c), now being considered, or indeed upon any ground not included in ss. 7 and 12. The fact that he has failed to do so will not, however, prejudice his

(*t*) *R.* v. *Local Government Board* (1882), 10 Q. B. D. 309; 52 L. J. M. C. 4; 48 L. T. 173; 31 W. R. 72; 47 J. P. 228.

(*u*) *R.* v. *Local Government Board, supra.*

position when the authority take proceedings against him (*x*), assuming that his objection is one which can be raised at that point.

The section appears to contemplate that the decision of the Local Government Board shall be final (*y*). It will, however, only be so as to points actually submitted to them (*z*).

Position of an owner if notices not served.

Before leaving the subject of objections and defences a word must be said as to the position of an owner whose premises are included in an apportionment, but upon whom the required notices have not been served. Whether he is, or is not, otherwise aware of the proposals of the authority, would appear to be immaterial; he will have a good defence when the authority seek to recover payment from him. It must be pointed out, however, that it is not easy for an owner to make certain that a notice has not been served in such a way as to satisfy the statute; therefore, if he knows of the proposals, and has some valid objection to offer, it may be advisable for him to raise it at the proper stage in the proceedings.

III. Subsequent Proceedings down to Final Apportionment.

Subsequent proceedings.

The justices having approved the scheme, either in its original or in an amended form, the authority may proceed to execute the works (*a*). They have, however, power under s. 11 to make further amendments in the scheme—in either the specifications, plans, sections, estimates, or provisional apportionment—subject only to the proviso that if the total amount of the estimate in respect of any street, or part of a street, is increased,

Authority may amend their proposals.

(*x*) *Eccles* v. *Wirrall Rural Sanitary Authority* (1886), 17 Q. B. D. 107; 55 L. J. M. C. 106; 34 W. R. 412; 50 J. P. 596; *Derby Corporation* v. *Grudgings* (1894), 2 Q. B. 496; 63 L. J. M. C. 170; 43 W. R. 74; 58 J. P. 685; 10 T. L. R. 455; *Walthamstow Local Board* v. *Staines* (1891), 2 Ch. 606; 60 L. J. Ch. 738; 65 L. T. 430; 7 T. L. R. 446.

(*y*) *Eccles* v. *Wirrall Rural Sanitary Authority, supra.*

(*z*) *Seabrooke* v. *Grays Thurrock Local Board* (1891), 8 T. L. R. 19.

(*a*) The authority cannot safely begin the work before such approval: *Stock* v. *Meakin* (1900), 1 Ch. at p. 693.

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such estimate and the provisional apportionment must be published and deposited for inspection, and copies served upon the owners of the premises affected thereby. Objections may then be made to the increase in the estimate and apportionment, and are to be dealt with in the same way as objections to the original estimate and apportionment.

It will be noticed that, so long as the total estimate is not increased, no opportunity is given to an owner of objecting to such amendments. There is apparently no provision in the Act which will prevent an authority rearranging an apportionment so as to deliberately override decisions of the justices upon the original hearing. Apparently, however, in such an event, an aggrieved owner could appeal to the Local Government Board under s. 268 of the Public Health Act (see p. 77, *ante*).

Final apportionment.

Upon completion of the work the surveyor must ascertain the actual total cost of the work (s. 12 (1)). He is then to make a final apportionment (*b*) "by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be)." Notice of the final apportionment must be served upon the owners of all premises affected, and at the expiration of a month from such service the apportionment becomes conclusive for all purposes (*c*), unless notice of objection be lodged by some owner within that period.

Objections to it.

The grounds of objection open to an owner at this stage of the proceedings are three in number :—

(a) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent.

(b) That the final apportionment has not been made in accordance with s. 12.

(*b*) For form, see Appendix.
(*c*) *I.e.*, conclusive as to the amount (if any) due, not as to the liability.

(c) That there has been an unreasonable departure from the specification, plans and sections.

Determination of objections.

The statute goes on to provide that objections under this section are to be determined in the same manner as objections to the provisional apportionment; but it gives no indication as to how the justices are to deal with the apportionment if they find an objection under (a) or (c) to be proved.

Presumably they must determine what portion of the total cost has been unreasonably incurred, and leave the authority to pay such sum out of the rates, apportioning the balance upon the various premises in accordance with s. 12.

CHAPTER V.

RECOVERY OF PRIVATE STREET WORKS EXPENSES.

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Apart from the charge created by s. 13 (1), consideration of which is postponed to chapter VI., there are two modes of recovering private street works expenses open to an authority.

A. Recovery as private improvement expenses.

A. Recovery as private improvement expenses.

They may resolve to proceed under s. 12 (1), which provides that the sums apportioned—

> "Shall be recoverable in manner provided by this Act (*a*), or in the same manner as private improvement expenses are recoverable under the Public Health Act, 1875, including the power to declare any such expenses to be payable by instalments."

The result of this provision is that, if the authority elect to treat the expenses as private improvement expenses, two courses are open to them :—

(i.) A rate upon occupier.

(i.) They may make a private improvement rate under s. 213 of the Public Health Act, which enacts that—

(*a*) *I.e.*, summarily, or by action. See (B), *post*, p. 88.

"Whenever an urban authority have incurred, or become liable to, any expenses which by this Act are, or by such authority may be declared to be, private improvement expenses, such authority may, if they think fit, make, and levy, on the occupier of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate, or rates, to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine.

"Provided, that whenever any premises, in respect of which any private improvement rate is made, become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on, and be paid by, the owner for the time being of the premises so long as the same continue to be unoccupied."

This section is (in effect) a power to make the expenses payable by instalments: it also gives the authority a remedy against the occupier of any premises which may be inhabited, though such occupier has never been consulted about the proposed works. The next section (214), however, whilst leaving the occupier liable to the authority, gives him a remedy over (to a certain extent) against the owner: it provides that—

Occupier's remedy against owner.

"Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rack rent, he shall be entitled to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his

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landlord; and, if he hold at a rent less than the rack rent, he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rack rent; and, if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof.

"Provided, that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him, more than the whole sum deducted from the rent payable to him."

Section 215 provides for the redemption of the rate at the option of the owner or occupier:—

Redemption of rate.

"At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same:

"Provided, that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying

expenses incurred by them in works of private improvement, or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise."

Recovery of rate by summary proceedings.

The method of recovering such rates is prescribed by s. 256:—

"If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due, and for the space of fourteen days after the same has been lawfully demanded in writing, or if any person quits, or is about to quit, any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid (*b*); and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.

"The costs of the levy of arrears of any rate may be included in the warrant for such levy."

(ii.) Payment by instalments.

(ii.) Instead of making a rate, the authority may declare the private improvement expenses to be payable by instalments under s. 257:—

(*b*) Presumably the "six months" limitation imposed by s. 11 of the Summary Jurisdiction Act, 1848, will apply to these proceedings, the time beginning to run from the expiration of the fourteen days after the demand.

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"... The local authority may, by order, declare any such expenses (*c*) to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act" (*d*).

Recovery thereof from owner or occupier.

(a) Summarily.

With regard to such summary recovery, s. 251 provides that—

"All ... costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice."

The question of limitation is dealt with in s. 257:—

Time for proceedings.

"In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within

(*c*) *I.e.*, expenses of private improvement works.

(*d*) Section 214, at p. 83, *ante*.

which such proceedings may be taken shall be reckoned from the date of the service of notice of demand."

The period of limitation will be six months (Summary Jurisdiction Act, 1848, s. 11). This section appears to contemplate a separate demand as each instalment falls due. It will be safer, however, to commence the proceedings within six months after the instalment falls due irrespective of the date of demand.

(b) In county court.

An alternative mode of recovering such instalments is provided by s. 261 as follows:—

"Proceedings for the recovery of demands below fifty pounds which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognisance of such courts."

Time for proceedings.

It has been held (*e*) that the six months' limitation imposed in the case of summary proceedings is also applicable to proceedings in the county court: a recent case (*f*), however, has thrown doubt upon the correctness of this decision; and, although it would be unwise to allow the six months to elapse before suing, the authors believe that six years is now the period applicable.

The reader is referred to p. 90 for a consideration of the questions, (1) whether having declared expenses to be private improvement expenses the authority can change their mind and proceed under s. 14; and (2) whether having failed to recover the amount due under s. 14, they can still exercise their option of declaring the expenses to be private improvement expenses.

(*e*) *Tottenham Local Board* v. *Rowell* (1877), 1 Ex. D. 514; 46 L. J. Q. B. 432; 35 L. T. 887; 25 W. R. 135.

(*f*) *Blackburn Corporation* v. *Sanderson*, *post*.

B. Recovery of expenses summarily, or by action.

B. Recovery summarily or by action.

Section 14 provides that—

"The urban authority, if they think fit, may from time to time (in addition and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or as a simple contract debt by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due for expenses of private street works the whole or any portion of such sum, together with interest at a rate not exceeding four pounds per centum per annum, from the date of the final apportionment till payment thereof."

In addition to the two questions above-mentioned, and postponed for future consideration, two points arise upon this section :—

(1) What is the period of limitation applicable?

(2) From what date does it run?

(1) Period of limitation.

(1) With regard to the first point it seems to follow from a recent decision (*g*) of the Court of Appeal that, where the local authority proceed in the High Court or county court, the period is six years. That case was decided upon the Blackburn Improvement Act, 1882, which enacted that the expenses incurred by the corporation in paving any street under the provisions of that Act shall be recoverable either by summary proceedings before justices, or, if the corporation think fit, in the superior courts or any court of competent jurisdiction. It was held that the corporation had the option of proceeding either by complaint before justices, or, alternatively, by action in the superior courts, or in any court of competent jurisdiction; and that s. 11 of the Summary Jurisdiction Act, 1848, which requires proceedings to be commenced within six months from

(*g*) *Blackburn Corporation* v. *Sanderson* (1902), 1 K. B. 794; 66 J. P. 194; 18 T. L. R. 436.

the time of the cause of action arising, applies only to a proceeding under the summary jurisdiction, and not to any of the alternative proceedings.

In the course of his judgment Vaughan Williams, L.J., said, "In my judgment, if you find in an Act of Parliament the power to take the remedy in divers courts, that remedy will, in each court, be subject to the *lex fori* of that court, and the *lex fori* includes the limitation of actions, which goes to the remedy and not to the right."

It may, therefore, be safely assumed that for High Court and county court actions the period is six years, and for summary proceedings six months (Summary Jurisdiction Act, 1848, s. 11).

(2) From what date it runs.

(a) Summary proceedings.

(2) (a) There appears to be no doubt that in the case of summary proceedings the time begins to run from the service of a demand for payment. It will be remembered that s. 257 of the Public Health Act, 1875, runs—

> "In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand."

In construing a similar section (21 & 22 Vict. c. 98, s. 62) the court held that the words "incurred in works of private improvement" were used in the general sense of works executed upon private property, and tending to improve it, and were not limited to expenses declared to be private improvement expenses; that a demand for payment was therefore necessary; and that a notice of apportionment is not a sufficient demand (*h*). And in a later case (*i*), in construing s. 257, *supra*, Brett, L.J., said, "Until the authority have given that notice of demand

(*h*) *Greece* v. *Hunt* (1877), 2 Q. B. D. 389; 46 L. J. Q. B. 202; 36 L. T. 404; 25 W. R. 543; 41 J. P. 356.

(*i*) *Reg.* v. *Local Government Board* (1882), 10 Q. B. D. at p. 324; 52 L. J. M. C. 4; 48 L. T. 173; 31 W. R. 72; 47 J. P. 228.

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they are not in a position to recover anything by way of summary process."

Apparently the demand may be delayed as long as the authority choose without in any way prejudicing their rights (*k*). On the other hand, a valid demand cannot be made before the end of the period allowed for lodging objections, or the determination of such objections (as the case may be) (*l*).

(b) Proceedings in other courts.

(b) There would appear to be no provision in the Act of 1892, or the Public Health Act, 1875, rendering necessary any formal demand for payment, except where the authority desire to proceed summarily; and this view is to some extent supported by a *dictum* of BRETT, L.J., who (in dealing with s. 257, *supra*), after referring to the notice of demand required in summary proceedings, said that such notice was the only one which a local authority has to give (*m*). If this be so, the authority must commence an action in the High Court or county court within the usual period, viz., six years from the date when their right to sue first accrues, *i.e.*, at the expiration of one month after service of notice of a final apportionment, if it is not disputed, or if disputed, from the settlement of the dispute by the justices.

At the same time, although a demand is probably unnecessary, and has no effect upon the question of limitation, it is certainly undesirable for an authority to commence proceedings without making a formal claim for payment.

Effect of s. 14 upon s. 12.

It now remains for us to consider how far (if at all) proceedings under s. 14 are inconsistent with the recovery of expenses as private improvement expenses. The question falls under two heads: firstly, can an

(*k*) *Wortley* v. *St. Mary, Islington* (1887), 51 J. P. 167.

(*l*) *Simcox* v. *Handsworth Local Board* (1882), 8 Q. B. D. 39; 51 L. J. Q. B. 168; 30 W. R. 723; 46 J. P. 260.

(*m*) *R.* v. *Local Government Board, supra.*

authority, after trying and failing to recover expenses under s. 14, declare them to be private improvement expenses? The Public Health Act, 1848, provided that similar expenses might be recovered in a summary manner, or might be declared to be private improvement expenses, and in a case (*n*) decided upon this statute the court held that an authority was not entitled to adopt both modes of obtaining payment, and that there must be a time when their election to take one course would be considered irrevocable. The present statute, however, expressly says that proceedings under s. 14 are to be "in addition and without prejudice to any other remedy." Unless these words are to be read in a very restricted sense, as referring only to the charge created by s. 13, the above case cannot (so far as this Act is concerned) be regarded as good law, and it would appear that there can be no longer any objection to an authority first proceeding under s. 14, and then (in the event of failure) declaring the expenses to be private improvement expenses.

Secondly, can an authority, after declaring the expenses to be private improvement expenses, take proceedings under s. 14? In cases (*o*) under the earlier statutes it was held that they could not, on the ground that having informed an owner of their intention to take one course they were estopped from withdrawing from that position. But it must be noted that under those statutes they could (if allowed to proceed) have recovered summarily the whole expenses in a lump sum, though they had decided to make them payable by instalments. Under the present statute no such injustice would be done, for s. 14 only entitles them to recover from time to time such sum as is due, *i.e.*, presumably, only such instalments as are in arrear (assuming the expenses to have

(*n*) *Wilson* v. *Bolton Corporation* (1871), L. R. 7 Q. B. 105; 41 L. J. M. C. 4; 25 L. T. 597; 36 J. P. 405.

(*o*) *Eddleston* v. *Francis* (1861), 7 C. B. (N.S.) 568; 3 L. T. 270; 25 J. P. 135; *Gould* v. *Bacup Corporation* (1881), 50 L. J. M. C. 44; 44 L. T. 103; 29 W. R. 471; 45 J. P. 325.

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been declared private improvement expenses). It would appear, therefore, reasonable to give to the words "in addition, etc.," their natural meaning, and to allow an authority, after declaring the expenses to be private improvement expenses, to recover under s. 14 any arrears, the only practical result of which will be to enable them to have recourse to an "owner" where an occupier is in arrear with an improvement rate.

CHAPTER VI.

THE CHARGE, AND ITS INCIDENCE.

SECTION 13 provides that—

"(1) Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under section two hundred and fifty-seven of the Public Health Act, 1875) with the sum finally apportioned on them, or if objection has been made against the final apportionment with the sum determined to be due as from the date of the final apportionment, with interest at the rate of four pounds per centum per annum, and the urban authority shall, for the recovery of such sum and interest, have all the same powers and remedies under the Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver.

"(2) The urban authority shall keep a register of charges under this Act and of the payments made in satisfaction thereof, and the register shall be open to inspection to all persons at all reasonable times on payment of not exceeding one shilling in respect of each name or property searched for, and the urban authority shall furnish copies of any part of such register to any person applying for the same on payment of such reasonable sum as may be fixed by the urban authority."

Section 257 of the Public Health Act, 1875, so far as it is here referred to, is as follows :—

"Where any local authority have incurred expenses

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for the repayment whereof the owner of the premises, for or in respect of which the same are incurred, is made liable under this Act, or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate (*a*) not exceeding five pounds per centum per annum, from the date of service of a demand (*b*) for the same till payment thereof, from any person (*c*) who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred . . . ."

The sections of the Conveyancing Act, 1881, above referred to, are ss. 18—24.

The charge upon the premises created by this section is distinct from, and independent of, the provisions of ss. 12 and 14. Consequently an authority may have recourse to this remedy at any time, though, as a rule, they will only need to do so when other methods of recovery have failed. The only restrictions appear to be, (1) the ordinary period of limitation applicable to such a charge, viz., twelve years dating from the completion of the works (*d*); and (2) that, where the authority have elected to recover as improvement expenses, the charge can only be enforced in respect of such payments as may from time to time be in arrear (*e*).

From what date.

The charge takes effect as from the date of the

(*a*) Under the present statute, fixed at four per cent. (s. 13, *supra*).

(*b*) Under the present statute, from the date of the final apportionment (*Stock* v. *Meakin*), *post*.

(*c*) Under the present statute, from the owner for the time being (s. 14).

(*d*) *Hornsey Local Board* v. *Monarch* (1890), 24 Q. B. D. 1; 59 L. J. Q. B. 105; 61 L. T. 867; 38 W. R. 85; 54 J. P. 391.

(*e*) *Tottenham Local Board* v. *Rowell* (1880), 15 C. D. at p. 394; 50 L. J. Ch. 99; 43 L. T. 616; 29 W. R. 36.

completion of the works, but interest is to be reckoned from the date of the final apportionment (*f*).

Enforcement of charge.

Under the Public Health Act it was necessary to bring an action in order to enforce such a charge. This is no longer necessary under the provisions of the present statute. It must, however, be remembered that the power of sale will not arise so long as interest is duly paid, or until a notice has been served requiring payment of the principal sum, and default has been made for three months (Conveyancing Act, s. 20). The power of appointing a receiver will probably be the one found most useful in practice: it is exercisable under the same conditions as the power of sale (Conveyancing Act, s. 24 (1)). The power of leasing can only be exercised by mortgagees in possession (Conveyancing Act, s. 18).

The charge takes precedence over all other incumbrances, and is a charge, not on the interest of any particular owner of the premises, but on the total ownership, *i.e.*, on the respective interest of every owner for the time being in proportion to the value of his interest (*g*). Where an authority enforce a charge by sale, they are trustees of the balance of the purchase price, and are responsible for its payment to the persons entitled (*h*). If, therefore, there is any doubt as to the respective proportions due to such persons, or as to the person really entitled, the authority should pay the balance into court under the provisions of the Trustee Relief Act.

In the case of premises which cannot be sold in consequence of some statutory enactment, *e.g.*, a school within the provisions of the School Sites Act, 1841 (*i*),

(*f*) *Stock* v. *Meakin* (1900), 1 Ch. 683; 82 L. T. 248; 48 W. R. 420.

(*g*) *Birmingham Corporation* v. *Baker* (1882), 17 C. D. 782; 46 J. P. 52.

(*h*) *West London Commercial Bank* v. *Reliance Building Society* (1885), 29 Ch. D. 954.

(*i*) *Hornsey Urban District Council* v. *Smith* (1897), 1 Ch. 843; 66 L. J. Ch. 476; 76 L. T. 431; 45 W. R. 581, reversing 61 J. P. 311.

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although the charge attaches, it cannot be enforced by sale; but the authority can, of course, proceed against the trustees of such premises personally (*k*).

Register of charges.

The local authority must carefully observe the provisions of s. 13 (2), *supra*, as to keeping a register of charges. This provision is most valuable to intending purchasers of property, for it has been decided that a similar charge under the Public Health Act, 1875, does not require registration under the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51) (*l*), and apparently this decision is applicable to charges created under the present Act.

A few words may be added as to the position of limited owners, landlords and tenants, and persons under a contract to purchase premises.

Limited owners.

As regards limited owners, an important provision is contained in s. 17, to the effect that—

> "All owners of buildings or lands, being persons who under the Lands Clauses Acts are empowered to sell and convey or release lands, may charge such buildings or lands with such sum as may be necessary to defray the whole or any part of any expenses which the owners of or any persons in respect of such buildings or lands for the time being are liable to pay under this Act and the expenses of making such charge, and for securing the repayment of such sum with interest may mortgage such buildings or lands to any person advancing such sum, but so that the principal due on any such mortgage shall be repaid by equal yearly or half-yearly payments within twenty years."

(*k*) See p. 57, *ante*.

(*l*) *Reg.* v. *Vice-Registrar of Office of Land Registry* (1890), 24 Q. B. D. 178; 62 L. T. (N.S.) 117; S. C. *nom. Reg.* v. *Holt*, 59 L. J. Q. B. 113; 54 J. P. 120.

The section applicable is s. 7 of the Lands Clauses Consolidation Act, 1845, which confers a power of sale upon—

> "All corporations, tenants in tail or for life, married women seised in their own right, or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipts of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or for any less interest."

It was held in *Re Smith* (1901), 1 Ch. 689; 70 L. J. Ch. 273, that a tenant for life could under s. 11 of the Settled Land Act, 1890, raise a sum due under s. 150 of the Public Health Act, 1875, by mortgage of the settled estate. Apparently this right is now restricted by s. 17 (*supra*).

Landlords and tenants.

Vendors and purchasers.

In the case of landlords and tenants, or vendors and purchasers, the ultimate incidence of the expenses must depend upon the covenants (express or implied) between the parties. The question has been considered in two recent cases: in the earlier one (*m*) an authority completed certain works on July 26th; on October 10th the owner of premises affected agreed to sell them, the purchase to be completed on November 11th, and all outgoings to be apportioned up to that date: the final apportionment by the local authority was not made till December. The Court of Appeal held that the expenses were an "outgoing" (*n*) in respect of the premises as from the date of completion of the works, and must be borne by the vendor under his contract; and, further, that the charge was (as from the same date) an incum-

(*m*) *Stock* v. *Meakin* (1900), 1 Ch. 683; 82 L. T. 248; 48 W. R. 420.

(*n*) Apparently the word "impositions" will also include such expenses: *Foulger* v. *Arding* (1902), 1 K. B. 700; 18 T. L. R. 422.

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brance within the vendor's covenant implied by his conveying as "beneficial owner." In the second case (*o*) a distinction was drawn between "outgoings" and "present and future outgoings," and it was held that a lessee, who had agreed to pay "present and future outgoings," was liable for the expenses of works completed before the date of his lease, if the final apportionment was not made until afterwards, on the ground that such expenses were present outgoings payable *in futuro*, and therefore within the covenant.

(*o*) *Surtees* v. *Woodhouse* (1902), 18 T. L. R. 222.

CHAPTER VII.

ADOPTION OF PRIVATE STREETS (*a*).

THE statute contains two sections dealing with the powers and duties of a local authority as to "taking over" streets.

(A) POWERS EXERCISABLE BY THE AUTHORITY AT THEIR DISCRETION.

(a) Powers of an authority.

Section 19 provides that—

"Whenever all or any of the private street works in this Act mentioned have been executed in a street or part of a street, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large."

Previous powers extended.

It will be seen that under this section an urban authority who have adopted the Act, or a rural authority who have been authorised to put in force the whole Act, or this particular section (see p. 11, *ante*), have much ampler powers than if they proceed under the Public Health Act, 1875, or the Public Health Acts Amendment Act, 1890.

(i.) Under s. 152 of the Act of 1875 *all* the works

(*a*) The marginal note to s. 19 has been taken as the heading of this chapter. The wording of it is not, however, felicitous, for the term private street is hardly appropriate to a public highway, which may yet be adopted, if not already repairable by the inhabitants at large.

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therein specified must be done before the street can be adopted (*b*). Section 41 of the Act of 1890, and the present section, both authorise adoption when *any* of them have been done.

(ii.) Under the Act of 1890 the work must have been done by the local authority. Under this section it will be sufficient that the work has been done, no matter by whom.

(iii.) The owners cannot object; whereas under both s. 152 of the Act of 1875, and s. 41 of that of 1890, the owner, or the majority (in number or value) of the owners, of the street could refuse to consent to the adoption.

Interference with private rights.

The power to thus interfere with the rights of property may obviously have very serious consequences to the owners; and yet it is difficult to say with certainty what will be the exact legal result of the compulsory adoption of a street under these provisions.

In view, however, of the great importance of the subject to owners of the soil of streets, it is felt that some attempt should be made to deal with the question. For this purpose streets may be divided into two classes:

i. Those which have previously been dedicated as highways.

ii. Those which have hitherto been essentially private.

i. Streets already dedicated as highways.

i. Here the question of limited or qualified dedication is involved. As previously stated (p. 28), it has long been settled law that an owner may dedicate a highway to the public, subject to a reservation or obstruction. In the words of Lord BLACKBURN (*c*), "The question still remains whether an erection, or excavation, already existing and not otherwise unlawful, becomes unlawful

(*b*) *Attorney-General* v. *Bidder* (1881), reported (1883), 47 J. P. 263.

(*c*) *Fisher* v. *Prowse*, and *Cooper* v. *Walker* (1862), 31 L. J. Q. B. 212; 2 B. & S. 780. See also *Mercer* v. *Woodgate* (1869), L. R. 5 Q. B. 26, followed in *Arnold* v. *Blaker*, 6 *Ibid.* 423; 40 L. J. Q. B. 185; 19 W. R. 1090.

when the land on which it exists, or to which it is immediately contiguous, is dedicated to the public as a way, if the erection prevents the way from being so convenient, and safe, as it otherwise would be; or whether, on the contrary, the dedication must not be taken to be made to the public, and accepted by them, subject to the inconvenience, or risk, arising from the existing state of things. We think that the latter is the correct view of the law. It is, of course, not obligatory on the owner of land to dedicate the use of it as a highway to the public. It is equally clear that it is not compulsory on the public to accept the use of a way when offered to them. If the use of the soil as a way is offered by the owner to the public under given conditions, and subject to certain reservations, and the public accept the use under such circumstances, there can be no injustice in holding them to the terms on which the benefit was conferred. On the other hand, great injustice and hardship would often arise if, when a public right of way has been acquired under a given state of circumstances, the owner of the soil should be held bound to alter that state of circumstances to his own disadvantage and loss, and to make further concessions to the public altogether beyond the scope of his original intention. More especially would this be the case when public rights of way have been acquired by mere use. For instance, the owner of the bank of a canal, or sewer, may, without considering the effect of what he is doing, permit passengers to pass along until the public have acquired a right of way there. It is often hard upon him that the public right should have been thus acquired; it would be doubly so if the consequence was that he was bound to fill up, or fence off, his canal."

Such being the general law upon the point, the question arises whether the local authority have any statutory power enabling them to remove any obstruction, or abrogate any condition subject to which the

highway may have been dedicated at an earlier date (*d*). So far as the authors are aware, they have no such power given to them, either as the successors of highway surveyors under s. 6 of the Highway Act, 1835, and s. 144 of the Public Health Act, 1875; or as successors of a highway board (where they happen to be such) under ss. 47, 48, of the Highway Act, 1864, or under such statutes as the Towns Improvement Clauses Act, 1847, ss. 69, 70, or the Public Health Act, 1875, s. 149. This view is to some extent supported by a decision of the Court of Appeal (*e*) to the effect that an authority when paving and making good a street (a highway, but not one repairable by the public) under s. 150 of the Public Health Act, 1875, have no power to alter the respective widths of the footway and carriage way, originally dedicated, and laid out in accordance with plans approved by them. It would, at least, involve an absurdity if an authority must deal with such a street as dedicated, but then, having declared it a highway repairable by the inhabitants at large, might convert it as they pleased. Reference may also be made to a case (*f*) in which it was held that the provisions of the Highway Acts and Metropolis Local Management Acts, so far as they apply to roads and streets, are subordinate to the paramount rights reserved by the owner. In this instance it was proved that certain property could not be reasonably enjoyed without a cart road across the adjoining footway. The vestry had refused to allow the owner to replace the flags by setts, and he had therefore carted goods across the flags, and, in so doing, broke some flags. The court approved the decision of the magistrate, who dismissed a summons for wilfully

(*d*) Such obstruction or condition might take the form of a gate across the highway, or a right to take toll (if such be possible, as to which see p. 29, *ante*).

(*e*) *Robertson* v. *Bristol Corporation* (1900), 2 Q. B. 198 ; 64 J. P. 389 ; 69 L. J. Q. B. 590 ; 82 L. T. 516 ; 48 W. R. 498.

(*f*) *Vestry of St. Mary, Newington* v. *Jacobs* (1871), L. R. 7 Q. B. 47 ; 41 L. J. M. C. 72 ; 25 L. T. 800 ; 20 W. R. 249 ; 36 J. P. 119.

damaging the highway, on the ground that the rights of ownership and those of the public might be jointly exercised consistently with the general welfare.

In the authors' opinion, a declaration that what is already a highway, is in future to be a highway repairable, etc., cannot amount to anything more than a formal adoption of liability to repair that highway, such as it is.

It would appear therefore that in order to remove, or purchase, some obstruction, or toll, subject to which a highway has been dedicated, special statutory powers will be necessary.

ii. Streets not previously dedicated.

ii. Where, however, a street has never been dedicated, the position is apparently different. It would seem that, in enabling an authority to declare such a street to be a highway repairable by the inhabitants at large, the Legislature has conferred upon them the power to transfer what was private property from the owners thereof to themselves, and then to dedicate it themselves to the use of the public free from any obstruction or restriction (*g*).

Such a power will seriously affect an owner who has (*inter alia*) (1) allowed no one but his tenants (living therein) and their friends to use a private street; (2) allowed it to be used only in consideration of a wayleave; or (3) dedicated it to the public as a footway only, reserving for himself the right of user for carriages.

If the authors are correct, such owner must acquiesce in the street being thrown open for all purposes, and seek compensation under s. 308 of the Public Health Act, 1875, for the loss of his wayleave, or deterioration of his property.

(b Duties of an authority.

(B) DUTIES OF AN AUTHORITY.

Section 20 provides that—

"If any street is now or shall hereafter be sewered, levelled, paved, metalled, flagged, channelled, and made good (all such works being done to the

(*g*) *Attorney-General* v. *Bidder* (1881), reported (1883), 47 J. P. 263.

satisfaction of the urban authority), then, on the application in writing of the greater part in value of the owners of the houses and land in such street, the urban authority shall, within three months from the time of such application, by notice put up in such street declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large."

This section needs little comment: it will be noticed that—

1. *All* the works specified must be first done to the satisfaction of the authority.

2. If the application be in order, the authority can exercise no discretion; and if they decline to do their duty, complaint may be made to the Local Government Board under s. 299 of the Public Health Act, 1875.

3. The section speaks of "owners of houses and land in such street." Presumably this means "along each side of a street," with the result that, when the soil of the street itself (as sometimes happens) belongs to a person who does not own land or houses at the side of the street, he will have no say in the matter.

4. There is no provision as to how the value of the houses and land is to be ascertained: presumably it means capital value.

5. The same considerations as to the invasion of private rights and compensation may arise under this section as under the previous one.

The present statute does not in terms mention s. 23 of the Highway Act, 1835. An owner, however, cannot get rid of his liability to repair any more lightly under that section, for under either statute the authority may require the same amount of repairs, etc., before adopting the street (*h*).

(*h*) *R.* v. *Dukinfield* (1863), 32 L. J. M. C. 230; 4 B. & S. 158; 27 J. P. 805.

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STATUTES.

THE PRIVATE STREET WORKS ACT, 1892.

(55 & 56 Vict. c. 57.)

An Act to amend the Public Health Acts in relation to Private Street Improvement Expenses. [28th June, 1892.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, construction, and extent.

1. This Act may be cited as the Private Street Works Act, 1892, and shall be construed as one with the Public Health Acts, and shall extend only to England; and this Act and the Public Health Acts may be cited together as the Public Health Acts.

Adoption of Act.

2. This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act.

Adoption of Act by urban authorities.

3. The following provisions shall have effect with regard to the adoption of this Act by urban authorities:

(1.) The adoption shall be by a resolution passed at a meeting of the urban authority; and one calendar month at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it if it is either —

(a.) Given in the mode in which notices to attend meetings of the authority are usually given; or

(b.) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid registered letter, addressed to the member at his usual or last known place of abode in England.

(2.) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal

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doors of every church and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation this Act shall extend to that district.

(3.) A copy of the resolution shall be sent to the Local Government Board.

(4.) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.

Local Government Board may extend Act to rural districts.

4. The Local Government Board may declare that the provisions contained in this Act shall be in force in any rural sanitary district, or any part thereof, and may invest a rural sanitary authority with the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of this Act, in like manner and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875.

Interpretation.

5. In this Act, if not inconsistent with the context,—

The expression "urban authority" means an urban sanitary authority under the Public Health Acts.

The expressions "urban sanitary district" and "rural sanitary district" mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts, and "district" means the district of an urban sanitary authority or of a rural sanitary authority as the case may require.

The expressions "surveyor," "lands," "premises," "owner," "drain," "sewer," have respectively the same meaning as in the Public Health Acts.

The expression "street" means (unless the context otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large.

Words referring to "paving, metalling, and flagging" shall be construed as including macadamising, asphalting, gravelling, kerbing, and every method of making a carriageway or footway.

Private street works.

6.—(1.) Where any street or part of a street is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority, the urban authority may from time to time resolve with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works); that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or part of a street; and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street. Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street.

(2.) The surveyor shall prepare, as respects each street or part of a street,—

(a.) A specification of the private street works referred to in the resolution, with plans and sections (if applicable);

(b.) An estimate of the probable expenses of the works;

(c.) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under this Act.

Such specification, plans, sections, estimate, and provisional apportionment shall comprise the particulars prescribed in Part I. of the Schedule to this Act, and shall be submitted to the urban authority, who may by resolution approve the same respectively with or without modification or addition as they think fit.

(3.) The resolution approving the specifications, plans, and sections (if any), estimates, and provisional apportionments, shall be published in the manner prescribed in Part II. of the Schedule to this Act, and copies thereof shall be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication. During one month from the date of the first publication the approved specifications, plans, and sections (if any), estimates, and provisional apportionments (or copies thereof certified by the surveyor), shall be kept deposited at the urban authority offices, and shall be open to inspection at all reasonable times.

Objections to proposed works.

7. During the said month any owner of any premises shown in a provisional apportionment as liable to be charged with any part of the expenses of executing the works may, by written notice served on the urban authority, object to the proposals of the urban authority on any of the following grounds; (that is to say,)

(a.) That an alleged street or part of a street is not or does not form part of a street within the meaning of this Act;

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(b.) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large;

(c.) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimate;

(d.) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive;

(e.) That any premises ought to be excluded from or inserted in the provisional apportionment;

(f.) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage as herein-after provided) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises.

For the purposes of this Act joint tenants or tenants in common may object through one of their number authorised in writing under the hands of the majority of such joint tenants or tenants in common.

Hearing and determination of objections.

8.—(1.) The urban authority at any time after the expiration of the said month may apply to a court of summary jurisdiction to appoint a time for determining the matter of all objections made as in this Act mentioned, and shall publish a notice of the time and place appointed, and copies of such notice shall be served upon the objectors; and at the time and place so appointed any such court may proceed to hear and determine the matter of all such objections in the same manner as nearly as may be, and with the same powers and subject to the same provisions with respect to stating a case, as if the urban authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable. The court may quash in whole or in part or may amend the resolution, plans, sections, estimates, and provisional apportionments, or any of them, on the application either of any objector or of the urban authority. The court may also, if it thinks fit, adjourn the hearing and direct any further notices to be given.

(2.) No objection which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever.

(3.) The costs of any proceedings before a court of summary jurisdiction in relation to objections under this Act shall be in the discretion of the court, and the court shall have power, if it thinks fit, to direct that the whole or any part of such costs ordered to be

paid by an objector or objectors shall be paid in the first instance by the urban authority, and charged as part of the expenses of the works on the premises of the objector or objectors in such proportions as may appear just.

Incidental works.

9.—(1.) The urban authority may include in any works to be done under this Act with respect to any street or part of a street any works which they think necessary for bringing the street or part of a street, as regards sewerage, drainage, level, or other matters, into conformity with any other streets (whether repairable or not by the inhabitants at large), including the provision of separate sewers for the reception of sewage and of surface water respectively.

(2.) The urban authority in any estimate of the expenses of private street works may include a commission not exceeding five pounds per centum (in addition to the estimated actual cost) in respect of surveys, superintendence, and notices, and such commission when received shall be carried to the credit of the district fund.

Apportionment of expenses.

10. In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining, or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises; but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations; (that is to say,)

(a.) The greater or less degree of benefit to be derived by any premises from such works;

(b.) The amount and value of any work already done by the owners or occupiers of any such premises.

They may also, if they think just, include any premises which do not front, adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.

Amendment of plan, etc.

11. The urban authority may from time to time amend the specifications, plans, and sections (if any), estimates, and provisional apportionments for any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment shall be published in the manner prescribed in Part II. of the Schedule to

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this Act, and shall be open to inspection at the urban authority offices at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby; and objections may be made to the increase and apportionment, and if made shall be dealt with and determined in like manner as objections to the original estimate and apportionment.

Final apportionment and recovery of expenses.

12.—(1.) When any private street works have been completed, and the expenses thereof ascertained, the surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be), and such final apportionment shall be conclusive for all purposes; and notice of such final apportionment shall be served upon the owners of the premises affected thereby; and the sums apportioned thereby shall be recoverable in manner provided by this Act, or in the same manner as private improvement expenses are recoverable under the Public Health Act, 1875, including the power to declare any such expenses to be payable by instalments.

38 & 39 Vict. c. 55.

(2.) Within one month after such notice the owner of any premises charged with any expenses under such apportionment may, by a written notice to the urban authority, object to such final apportionment on the following grounds, or any of them:—

(a.) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent.

(b.) That the final apportionment has not been made in accordance with this section.

(c.) That there has been an unreasonable departure from the specification, plans, and sections.

(3.) Objections under this section shall be determined in the same manner as objections to the provisional apportionment.

Charge on premises.

13.—(1.) Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under section two hundred and fifty-seven of the Public Health Act, 1875) with the sum finally apportioned on them, or if objection has been made against the final apportionment with the sum determined to be due as from the date of the final apportionment, with interest at the rate of four pounds per centum per annum, and the urban authority shall, for the recovery of such sum and interest, have all the same powers and remedies under the Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver.

(2.) The urban authority shall keep a register of charges under this Act and of the payments made in satisfaction thereof, and the register shall be open to inspection to all persons at all reasonable times on payment of not exceeding one shilling in respect of each name or property searched for, and the urban authority shall furnish copies of any part of such register to any person applying for the same on payment of such reasonable sum as may be fixed by the urban authority.

Recovery of expenses summarily or by action.

14. The urban authority, if they think fit, may from time to time (in addition and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or as a simple contract debt by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due for expenses of private street works the whole or any portion of such sum, together with interest at a rate not exceeding four pounds per centum per annum, from the date of the final apportionment till payment thereof.

Contribution by urban authority to expenses.

15. The urban authority, if they think fit, may at any time resolve to contribute the whole or a portion of the expenses of any private street works, and may pay the same out of the district fund or general district rate or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable.

Exemption from expenses of incumbent of church.

16. The incumbent or minister or trustee of any church, chapel, or place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor, shall not be liable to any expenses of private street works as the owner of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process, but the proportion of expenses in respect of which an exemption is allowed under this section shall be borne and paid by the urban authority.

Power for limited owners to borrow for expenses.

17. All owners of buildings or lands, being persons who under the Lands Clauses Acts are empowered to sell and convey or release lands, may charge such buildings or lands with such sum as may be necessary to defray the whole or any part of any expenses which the owners of or any persons in respect of such buildings or lands for the time being are liable to pay under this Act and the expenses of making such charge, and for securing the repayment of such sum with interest may mortgage such buildings or lands to any person advancing such sum, but so that the principal due on

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any such mortgage shall be repaid by equal yearly or half-yearly payments within twenty years.

Power for urban authority to borrow for private street works.

18. The urban authority may from time to time, with the sanction of the Local Government Board, borrow, on the security of the district fund and general district rates or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable, moneys for the purpose of temporarily providing for expenses of private street works, and the powers of the urban authority to borrow under the Public Health Acts shall be available as if the execution of private street works under this Act were one of the purposes of the Public Health Act, 1875.

Adoption of private streets.

19. Whenever all or any of the private street works in this Act mentioned have been executed in a street or part of a street, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large.

On street being paved, &c., urban authority to declare same public highway.

20. If any street is now or shall hereafter be sewered, levelled, paved, metalled, flagged, channelled, and made good (all such works being done to the satisfaction of the urban authority), then, on the application in writing of the greater part in value of the owners of the houses and land in such street, the urban authority shall, within three months from the time of such application, by notice put up in such street declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large.

Separate accounts of expenses of works.

21.—(1.) The urban authority shall keep separate accounts of all moneys expended and recovered by them in the execution of the provisions of this Act relating to private street works.

(2.) All moneys recovered by the urban authority under this Act in respect of street works shall be applied in repayment of moneys borrowed for the purpose of executing private street works, or if there is no such loan outstanding then in such manner as may be directed by the Local Government Board.

Railways and canals abutting but not communicating with streets not to be chargeable with private street expenses.

22. No railway or canal company shall be deemed to be an owner or occupier for the purposes of this Act in respect of any land of such company upon which any street shall wholly or partially front or abut, and which shall at the time of the laying out of such street be used by such company solely as a part of their

line of railway, canal, or siding, station, towing path, or works, and shall have no direct communication with such street; and the expenses incurred by the urban authority under the powers of this Act which, but for this provision, such company would be liable to pay, shall be repaid to the urban authority by the owners of the premises included in the apportionments, and in such proportion as shall be settled by the surveyor; and in the event of such company subsequently making a communication with such street they shall, notwithstanding such repayment as last aforesaid, pay to the urban authority the expenses which, but for the foregoing provision, such company would in the first instance have been liable to pay, and the urban authority shall divide among the owners for the time being included in the apportionment the amount so paid by such company to the urban authority, less the costs and expenses attendant upon such division, in such proportion as shall be settled by the surveyor, whose decision shall be final and conclusive. This section shall not apply to any street existing at the date of the adoption of this Act.

Expenses of local authority.

23. All expenses incurred or payable by an urban authority and a rural sanitary authority respectively in the execution of this Act, and not otherwise provided for, may be charged and defrayed as part of the expenses incurred by them respectively in the execution of the Public Health Acts.

Powers of Act cumulative.

24. All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

Certain sections of Public Health Acts not to apply.

25. Neither sections one hundred and fifty, one hundred and fifty-one, and one hundred and fifty-two of the Public Health Act, 1875, nor section forty-one of the Public Health Acts Amendment Act, 1890, shall apply to any district or part of a district in which this Act is in force.

For protection of Conservators of the River Thames.

26. This Act shall not extend to prejudice or derogate from the estates, rights, and privileges of the Conservators of the River Thames, or render them liable to any charges or payments in respect of any of their works on or upon the shores of the River Thames.

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Section 6, 11.

THE SCHEDULE.

PRIVATE STREET WORKS.

PART I.

Particulars to be stated in Specifications, Plans and Sections, Estimates, and Provisional Apportionments.

Specifications.—These shall describe generally the works and things to be done, and in the case of structural works shall specify as far as may be the foundation, form, material, and dimensions thereof.

Plans and Sections.—These shall show the constructive character of the works, and the connexions (if any) with existing streets, sewers, or other works, and the lines and levels of the works, subject to such limits of deviation (if any) as shall be indicated on the plans and sections respectively.

Estimates.—These shall show the particulars of the probable cost of the whole works, including the commission provided for by this Act.

Provisional Apportionments.—These shall state the amounts charged on the respective premises and the names of the respective owners, or reputed owners, and shall also state whether the apportionment is made according to the frontage of the respective premises or not, and the measurements of the frontages, and the other considerations (if any) on which the apportionment is based.

PART II.

Publication of Notice.

Any resolution, notice, or other document required by this Act to be published in the manner prescribed by this schedule shall be published once in each of two successive weeks in some local newspaper circulating within the district, and shall be publicly posted in or near the street to which it relates once at least in each of three successive weeks.

LOCAL GOVERNMENT ACT, 1894.

(56 & 57 Vict. c. 73.)

* * * * *

25.—(1.) As from the appointed day, there shall be transferred to the district council of every rural district all the powers, duties, and liabilities of the rural sanitary authority in the district, and of any highway authority in the district, and highway boards shall cease to exist, and rural district councils shall be the successors of the rural sanitary authority and highway authority, and shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sections one hundred and forty-four to one hundred and forty-eight of the Public Health Act, 1875, and those sections shall apply in the case of a rural district and of the council thereof in like manner as in the case of an urban district and an urban authority. Provided that the council of any county may by order postpone within their county or any part thereof the operation of this section, so far as it relates to highways, for a term not exceeding three years from the appointed day, or such further period as the Local Government Board may on the application of such council allow.

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PUBLIC HEALTH ACT, 1875.

(38 & 39 VICT. c. 55.)

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Definitions.

4. In this Act, if not inconsistent with the context, the following words and expressions have the meanings herein-after respectively assigned to them; that is to say,

* * * * *

"Person" includes any body of persons, whether corporate or unincorporate:

"Local authority" means urban sanitary authority and rural sanitary authority:

"Surveyor" includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act:

"Lands" and "Premises" include messuages buildings lands easements and hereditaments of any tenure:

"Owner" means the person for the time being receiving the rackrent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent:

"Rackrent" means rent which is not less than two thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent:

"Street" includes any highway . . . and any public bridge (not being a county bridge), and any road lane footway square court alley or passage whether a thoroughfare or not:

* * * *

"Drain" means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed:

"Sewer" includes sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act:

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PART III.

SANITARY PROVISIONS.

SEWERAGE AND DRAINAGE.

Regulations as to Sewers and Drains.

Sewers vested in local authority.

13. All existing and future sewers within the district of a local authority, together with all buildings, works, materials and things belonging thereto,

Except—

(1.) Sewers made by any person for his own profit, or by any company for the profit of the shareholders; and

(2.) Sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land; and

(3.) Sewers under the authority of any commissioners of sewers appointed by the Crown,

shall vest in and be under the control of such local authority.

Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same, or to whom the same have been transferred.

* * * * *

Maintenance and making of of sewers.

15. Every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act.

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Alteration and discontinuance of sewers.

18. Any local authority may from time to time enlarge lessen alter the course of cover in or otherwise improve any sewer belonging to them, and may discontinue close up or destroy any such sewer that has in their opinion become unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided that the discontinuance closing up or destruction of any sewer shall be so done as not to create a nuisance.

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PART IV.

LOCAL GOVERNMENT PROVISIONS.

HIGHWAYS AND STREETS.

As to Highways.

Powers of surveyors of highways and of vestries under 5 & 6 Will. 4, c. 50, vested in urban authority.

144 (*a*). Every urban authority shall within their district exclusively of any other person execute the office of and be surveyor of highways, and have exercise and be subject to all the powers authorities duties and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers authorities or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have exercise and be subject to all the powers authorities duties and liabilities which by the Highway Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district.

All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint.

* * * * *

Power of urban authority to agree as to making of new public roads.

146 (*a*). Any urban authority may agree with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly become on completion highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads.

* * * * *

(*a*) The powers of urban authorities under ss. 144—148 are conferred on rural district councils 56 & 57 Vict. c. 73, s. 25. See p. 115.

Regulations of Streets and Buildings.

Vesting of streets, &c., in urban authority.

149 (*b*). All streets, being or which at any time become highways repairable by the inhabitants at large within any urban district, and the pavements stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority.

The urban authority shall from time to time cause all such streets to be levelled paved metalled flagged channelled altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised lowered or altered as they think fit, and may place and keep in repair fences and posts for the safety of foot passengers.

Any person who without the consent of the urban authority wilfully displaces or takes up or who injures the pavement stones materials fences or posts of or the trees in any such street shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced taken up or injured; he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award.

Power to compel paving, &c., of private streets.

150 (*c*). Where any street within any urban district (not being a highway repairable by the inhabitants at large) or the carriageway footway or any other part of such street is not sewered levelled paved metalled flagged channelled and made good or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting adjoining or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good or to provide proper means for lighting the same within a time to be specified in such notice.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten

(*b*) As to mines and minerals under highways, see 41 & 42 Vict. c. 77, s. 27.

(*c*) Sections 150—152 do not apply to any district or part of a district in which 55 & 56 Vict. c. 57, is in force. See s. 25 of that Act.

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feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses.

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.

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Power to declare private streets when sewered, &c., to be highways.

152 (*d*). When any street within any urban district not being a highway repairable by the inhabitants at large has been sewered levelled paved flagged metalled channelled and made good and provided with proper means of lighting to the satisfaction of the urban authority, such authority may, if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large; and every such notice shall be entered among the proceedings of the urban authority.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor.

[See p. 99 for the alteration effected by s. 41 of the Public Health Act Amendment Act, 1890, where Part III. of that Act has been adopted.]

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(*d*) Rep. on adoption of Part III. of 53 & 54 Vict. c. 59; see s. 41 of that Act, which substitutes other provisions. See also note on preceding page.

Lighting Streets, &c.

161. Any urban authority may contract with any person for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district, and may provide such lamps, lamp posts, and other materials and apparatus as they may think necessary for lighting the same.

Powers of urban authority for lighting their district.

12 & 13 Vict. c. 94, s. 8.

Where there is not any company or person (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

33 & 34 Vict. c. 70.

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PART VI.

RATING AND BORROWING POWERS, &c.

EXPENSES OF URBAN AUTHORITY AND URBAN RATES.

207. All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, shall be charged on and defrayed out of the district fund and general district rate leviable by them under this Act, subject to the following exceptions; (namely,)

Mode of defraying expenses of urban authority.

That if in any district the expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts were at the time of the passing of this

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Act payable out of the borough fund or borough rate, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate; and

That if in any district the expenses incurred by an urban authority (being improvement commissioners) in the execution of the Sanitary Acts, were at the time of the passing of this Act payable out of any rate in the nature of a general district rate leviable by them as such commissioners throughout the whole of their district, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of such rate; and for the purposes of this section the council of the borough of Folkestone shall be deemed to be improvement commissioners; and

That where at the time of the passing of this Act the expenses incurred by an urban authority in the execution of certain purposes of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the other purposes of the said Acts were payable out of a rate or rates leviable by that authority throughout the whole of their district for paving sewers or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes respectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, and out of the rate or rates leviable as aforesaid.

Power in certain cases by provisional order to alter mode.

208. Where at the time of the passing of this Act the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the Local Government Acts, the Local Government Board may, on the application of such authority, or of any ten persons rated to the relief of the poor within the district, declare by provisional order that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund and general district rate to be levied by them under this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways.

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Private Improvement Rate.

Power to make private improvement rates.

213. Whenever an urban authority have incurred or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses, such authority may, if they think fit, make and levy on the occupier of the

premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine.

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner for the time being of the premises so long as the same continue to be unoccupied.

Proportion of private improvement rate may be deducted from rent.

214. Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rackrent, he shall be entitled to deduct three fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rackrent he shall be entitled to deduct from the rent so payable by him such proportion of three fourths of the rate as his rent bears to the rackrent; and if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof.

Provided that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him.

Redemption of private improvement rates.

215. At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same:

Provided that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying expenses incurred by them in works of private

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improvement or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise.

* * * * *

EXPENSES OF RURAL AUTHORITY.

Expenses of rural authority.

229. The expenses incurred by a rural authority in the execution of this Act shall be divided into general expenses and special expenses.

General expenses (other than those chargeable on owners and occupiers under this Act) shall be the expenses of the establishment and officers of the rural authority, the expenses in relation to disinfection, the providing conveyance for infected persons, and all other expenses not determined by this Act or by order of the Local Government Board to be special expenses.

Special expenses shall be the expenses of the construction maintenance and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act, the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board to be special expenses.

Where the rural authority make any sewers or provide any water supply or execute any other work under this Act for the common benefit of any two or more contributory places within their district, they may apportion the expense of constructing any such work, and of maintaining the same, in such proportions as they think just, between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

The overseers of any contributory place, if aggrieved by any such apportionment, may, within twenty-one days after notice has been given to them of the apportionment, send or deliver a memorial to the Local Government Board stating their grounds of complaint, and the said Board may make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive on all parties concerned.

General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in the district according to the rateable value of each contributory place in manner in this Act mentioned.

Special expenses shall be a separate charge on each contributory place.

The following areas situated in a rural district shall be contributory places for the purposes of this Act (that is to say):

(1.) Every parish not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts or of this Act, or of an urban district; and

(2.) Every such special drainage district as aforesaid; and

(3.) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and

(4.) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid.

Mode of raising contributions in rural district.

230. For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority, or to some person appointed by them, care being taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses.

Where a contributory place is part of a parish as defined by this Act, the overseers of such parish shall for the purposes of this Act be deemed to be the overseers of such contributory place, and where any part of a contributory place is part of a parish the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception; (namely,)

That the owner of any tithes, or of any tithe commutation rent-charge, or the occupier of any land used as arable meadow or

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pasture ground only, or as woodlands [(e) orchards, allotments], market gardens, or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the rateable value thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property:

Provided that where the amount required by any precept or precepts from a contributory place in respect of special expenses is less than ten pounds, or is so small that a rate less than one penny in the pound would be required to raise the same, the overseers shall not assess and levy any special rate for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of general expenses.

A separate rate under this section shall, as respects the powers of the overseers in relation to making assessing and levying such rate, and as respects the appeal against such rate, and all other incidents thereof except the purposes to which it is applicable, and such exemption as aforesaid, and except the allowance of justices, which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish, as they would have if such contributory place or such part thereof formed the whole of their parish.

Where a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall from time to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate, or by a separate rate to be assessed, made, allowed, published, collected, and levied in the same manner as a poor rate. The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate such

(e) Words in brackets inserted by 53 & 54 Vict. c. 17, s. 1; 54 & 55 Vict. c. 33, s. 1.

remuneration for the additional duty as the overseers with the consent of the vestry may determine.

The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made; and such surplus shall go in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the rural authority.

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As to private improvement expenses.

232. Whenever a rural authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority.

BORROWING POWERS.

Power to borrow on credit of rates.

233. Any local authority may, with the sanction of the Local Government Board, for the purpose of defraying any costs charges and expenses incurred or to be incurred by them in the execution of the Sanitary Acts or of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs charges and expenses, or for discharging any such loans as aforesaid.

An urban authority may borrow or re-borrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate.

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose

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of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund, rate, or rates.

Regulations as to exercise of borrowing powers.

234. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations; (namely,)

(1.) Money shall not be borrowed except for permanent works (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread over a term of years):

(2.) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed:

(3.) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said board:

(4.) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board, determine in each case; and, subject as aforesaid, the local authority shall either pay off the moneys so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund and accumulate in the way of compound interest by investing the same in the purchase of Exchequer bills or other Government securities, such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned:

(5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established: Provided that they pay into the fund in each year, and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied:

(6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of

the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board; and shall in no case be extended beyond the period of sixty years from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying private improvement expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of such authority, as between the rate-payers of the district, to make good, so far as they can, the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid.

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Form of mortgage.

236. Every mortgage authorised to be made under this Act shall be by deed, truly stating the date consideration and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect.

Register of mortgages.

237. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds.

238. [Transfer of mortgages.]

239. [Receiver may be appointed in certain cases.]

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Power of Public Works Loan Commissioners to lend to local authority.

242. The Public Works Loan Commissioners may, if they see fit, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security.

Power of Public Works Loan Commissioners to lend to local authority on recommendation of Local Government Board.

243. The Public Works Loan Commissioners may, on the application of any local authority, and on the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by this Act, whether for works already executed or yet to be executed, on the security of any fund or rate applicable to any of the purposes of

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this Act, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum, or such other rate as may, in the judgment of the Treasury, be necessary, in order to enable the loan to be made without loss to the Exchequer:

Provided,—

(1.) That, in determining the time when a loan under this section shall be repayable, the Local Government Board shall have regard to the probable duratio n and continuing utility of the works in respect of which the same is required:

(2.) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the Local Government Board in the performance of the duty of a defaulting local authority after the passing of the Public Health Act, 1872.

35 & 36 Vict. c. 79.

In the case of a loan made before the passing of the Public Health Act, 1872, to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than three and a half per centum per annum.

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PART VII.

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, &c.

Summary proceedings for offences, penalties, &c.

251. All offences under this Act, and all penalties forfeitures costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice.

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Summary proceedings for recovery of rates.

256. If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded

in writing, or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for nonpayment is shown, the court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

Recovery of expenses by local authority from owners

257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest, the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same.

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act.

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Appearance of local authorities in legal proceedings.

259. Any local authority may appear before any court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act.

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Demands below 50*l.* may be recovered in county court.

261. Proceedings for the recovery of demands below fifty pounds, which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognizance of such courts.

Proceeding not to be quashed for want of form.

262. No rate order conviction or thing made or done or relating to the execution of this Act shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removable by certiorari or any other writ or process whatsoever into any of the superior courts: Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate order conviction or thing to which such special case relates.

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Notices.

Notices, &c. may be printed or written.

266. Notices orders and other such documents under this Act may be in writing or print, or partly in writing and partly in print; and if the same require authentication by the local authority, the signature thereof by the clerk to the local authority or their surveyor or inspector of nuisances shall be sufficient authentication.

Service of notices.

267. Notices orders and any other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description.

Appeal.

Appeal in certain cases to Local Government Board.

268. Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the local authority; the Local Government Board may make such order in the matter as to the said Board may seem equitable, and the order so made shall be binding and conclusive on all parties.

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it thinks fit, by its order, direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss damage or grievance thereby sustained by him.

Appeal to quarter sessions.

269. Where any person deems himself aggrieved by any rate made under the provisions of this Act, or by any order conviction judgment or determination of or by any matter or thing done by any court of summary jurisdiction, such person may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to the next court of quarter sessions [(*f*) for the county division or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the court from which the appeal is made:

(2.) The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or court of summary jurisdiction by whose

(*f*) Words in brackets and sub-ss. (6) (7), rep. 47 & 48 Vict. c. 43, s. 4, so far as relates to an appeal against an order or conviction of a court of summary jurisdiction.

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act he deems himself aggrieved, of his intention to appeal, and the ground thereof:

(3.) The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow:

(4.) Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody]:

(5.) On appeals under this Act against any rate the court of appeal shall have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor; and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeals: Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the court of appeal think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made:

(6.) (*g*) In the case of other appeals the court of appeal may if it thinks fit adjourn the appeal, and on the hearing thereof may confirm reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just:

(7.) (*g*) The decision of the court of appeal shall be binding on all parties: Provided that the court of appeal may, if such court thinks fit, state the facts specially for the determination of a superior court.

* * * * *

(*g*) See note (*f*), p. 133.

Local Government Board may invest rural authority with powers of urban authority.

276. The Local Government Board may, on the application of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one tenth of the net rateable value of such district, or of any contributory place therein, by order to be published in the London Gazette or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any of the powers rights duties capacities liabilities and obligations of an urban authority under this Act; and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers rights duties liabilities capacities and obligations are to be exercised and attach: Provided that an order of the Local Government Board made on the application of one tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

* * * * *

Orders as to costs of inquiries.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

Orders of Board under this Act.

295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

* * * * *

Penalty on obstructing execution of Act.

306. . . . If the occupier of any premises when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a penalty not exceeding five pounds.

* * * * *

Compensation in case of damage by local authority.

308. Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be

APPENDIX A.

made to such person by the local authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of twenty pounds, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction.

APPENDIX B.

FORMS AND PRECEDENTS.

A.—URBAN AUTHORITIES.

1.

Notice to Clerk of Member's Intention to move Adoption of the Act.

To the Clerk to the Urban District [*or, as the case may be*] Council of .

[*Date.*]

Sir,—I beg to give you notice that, at the meeting of the council to be held on the day of next, it is my intention to move,

"That the Private Street Works Act, 1892, be adopted by the council for the sanitary district of the council, and that the resolution of adoption shall come into operation at such date (not less than one month after the first publication of the advertisement thereof), as the council may by the resolution fix."

I shall be glad if you will therefore give to the members of the council the notice requisite in this behalf.

Yours faithfully,
(*Signed*) A. B.

2.

Notice of Meeting at which Adoption is to be moved.

Urban District [*or, as the case may be*] Council of .

[*Date.*]

Sir,—I hereby give you notice that a meeting of the above council will be held at the council chamber [*or, as the case may be*], on the day of 190 , at o'clock in the noon;

APPENDIX B.

And I further give you notice that Mr. A. B. has informed me that it is his intention at such meeting to propose the following resolution, viz., [*see Form* 1].

Yours faithfully,
(*Signed*) C. D., Clerk.

To .

3.

Resolution.

"That the Private Street Works Act, 1892, be adopted by the council, for the sanitary district of the council, and that this resolution shall come into operation on the day of 190 ."

4.

Notice of Resolution (for Publication).

Urban Sanitary District of .

Private Street Works Act, 1892.

NOTICE

is hereby given, that at a meeting of the Urban District [*or, as the case may be*] Council of , being the sanitary authority for the above-named district, held on the day of 190 , it was resolved that the Private Street Works Act, 1892, be adopted for the sanitary district of the said council, and that such resolution shall come into operation on the day of 190 .

Dated the day of 190 .

By order of the Council,
(*Signed*) C. D., Clerk,
of [*Address*].

B.—RURAL AUTHORITIES.

5.

Notice of Intention to move that Application be made to the Local Government Board for an Order putting the Act in force.

To the Clerk to the Rural District Council of .

[*Date.*]

SIR,—I beg to give you notice that at the next meeting of the council it is my intention to move—

"That application be made to the Local Government Board for the issue of an order under s. 4 of the Private Street Works Act, 1892, putting in force the provisions of the said Act, in the contributory place of in the district of the council, so far as regards the streets, and parts of streets, hereinafter mentioned, and investing the council with all the powers, rights, duties, capacities, liabilities and obligations, which an urban district council may, by the adoption of the said Act, acquire, under such provisions, within the said contributory place so far as regards such streets and parts of streets, viz., [*set out streets and parts of streets*]."

Yours faithfully,

(*Signed*) A. B.

6.

Notice of Meeting at which Resolution is to be moved.

[*This Notice can be easily framed from Forms Nos.* 2 *and* 5.]

C.—URBAN AND RURAL AUTHORITIES.

7.

Resolution to do Private Street Works.

"That in pursuance of the Private Street Works Act, 1892, [that part of] Street [*or* Terrace] [lying between, *specifying its termini*] (*the street, or part of a street, in question must be indicated with sufficient clearness to enable persons interested to recognise it*), within the [contributory place of in the] sanitary district of the council, be [*set out the work, or works, which it is proposed to execute*];

APPENDIX B.

"And that the expenses of such works be apportioned upon the premises fronting, adjoining, or abutting on the said [part of the said] street [according to the respective frontages of such premises] [regard being had to (a) the greater, or less, degree of benefit to be derived by any premises from such works; (b) the amount and value of any work already done by the owners or occupiers, of any such premises:] [and also upon any premises, access to which is obtained from the said street through a court, passage, or otherwise, and which will be benefited by the works].

"And that the surveyor do prepare, in conformity with this resolution, [as respects each street, *or* part of a street, *if the resolution includes more than one*]—

"(a) A specification of the above-mentioned works with plans and sections (if applicable);

"(b) An estimate of the probable expenses of the works;

"(c) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under the Act."

8.

Specification.

The preparation of this specification is a point on which little assistance can be given in a work like the present to a practical surveyor. It should refer to the plans and sections (if any), and should give all details necessary for the guidance of a person desirous of tendering for the execution of the work. In particular, it must show the depth of excavation required, the material (*e.g.*, setts, kerb, nature of flags) to be used, the curve and level of the roadway and path, the size and position of sewers, gas-pipes, etc., and the other matters specified in the Schedule, Part I.

Estimate.

This can be framed from the specification, and should show the estimated cost of the various items, including the commission under s. 9 (2).

9.

Provisional Apportionment.

The following form is suggested as being capable of adaptation to any principle of apportionment, and any set of circumstances,

contemplated by the Act. It is based upon the idea that the simplest method of working out a "benefit" apportionment is to first determine the actual frontage, and then to add, or subtract, some percentage (representing the greater, or less, degree of benefit), the result being an artificial frontage, from which the apportionment can be calculated. Other forms and methods will no doubt suggest themselves to surveyors; but, so far as the authors can see, the one suggested will meet all requirements. The method of working is as follows:—First determine what premises are liable either as abutting on the street, or having access (if so resolved by the council); next (if so resolved) consider the total amount to be credited to the various premises in respect of work already done; add this sum (£15 10*s*. 0*d*.) to the estimated expenses of the new works (£158 8*s*. 0*d*.); the result (£173 18*s*. 0*d*.) shows the total value of the works when completed. From this must be deducted any sum (say £10) which the authority intend to contribute at once under s. 15; the balance (£163 18*s*. 0*d*.) has to be distributed amongst the various premises as follows:—First of all, the sum, or proportion, to be paid by the various premises "having access" must be determined,—say one-eleventh of the whole (£14 18*s*. 0*d*.), leaving £149 for the premises abutting.

The frontages of such premises being ascertained, the next point to be considered is the greater, or less, degree of benefit (if so resolved): in the example, 50 per cent. is added to the factory premises, and 50 per cent. deducted from the land not built over: the result is an "artificial" frontage of 745 feet; from these figures the proportionate share of each property can be worked out, and inserted as the "gross apportionment." In the next column appear the amounts credited in respect of work done, which must be deducted to arrive at the "net apportionment." The next column is for any amounts (beyond the original £10) which the authority must bear. If s. 22 is in operation, the last column but one may be required.

The result shows £103 8*s*. 0*d*. apportioned on the various premises, and £10 + £45 to be borne by the authority, amounting in all to £158 8*s*. 0*d*., the estimated expenses.

SPECIMEN PROVISIONAL APPORTIONMENT.

URBAN SANITARY DISTRICT OF . [RURAL SANITARY DISTRICT OF , CONTRIBUTORY PLACE OF .]

Private Street Works Act, 1892.

Provisional apportionment of the stimated expenses of Private Street Works to be executed in Street, in pursuance of a Resolution of the Council of , dated the day of , 190 .

Estimated expenses of work to be done	£158 8 0
,, value of work already done by owners and occupiers	15 10 0
,, total value of completed work	£173 18 0

The local authority will, in the first instance, contribute £10, leaving a balance of £148 8*s.* 0*d.* to be visionally apportioned as below.

Basis of Apportionment: On premises fronting, adjoining and abutting on the [part of the] street, regard being had to the greater, or less, degree of benefit to be derived by them, and the amount and value of work already done by their owners or occupiers, and also on premises access to which is obtained from the street, and which will be benefited by the works.

Description of Premises fronting, &c., on the Street.	Names of Owners or Reputed Owners	Actual Frontage in Feet.	Percentage of greater or less degree of benefit.	Resulting Estimated Frontage in Feet.	Proportionate Share.	Gross Apportionment.	Amounts credited for Work already done.	Amounts to be borne by Authority under s. 16.	Exemptions under s. 22 to be ultimately borne by the other Premises.	Net Amount apportioned on the respective Premises.
						£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*
Shop, No. 1, Street	A. B.	50	—	50	$\frac{50}{745}$	10 0 0	—	—	—	10 0 0
House and Garden, No. 2, Street	C. D.	75	—	75	$\frac{75}{745}$	15 0 0	—	—	—	15 0 0
Shop, No. 3, Street	E. F.	50	—	50	$\frac{50}{745}$	10 0 0	—	—	—	10 0 0
Factory, Nos. 4 and 5, Street	G H.	120	+ 50 %	180	$\frac{180}{745}$	36 0 0	10 10 0	—	—	25 10 0
Grassfield, lying E. of No. 5, Street	I. J.	130	− 50 %	65	$\frac{65}{745}$	13 0 0	—	—	—	13 0 0
Church and Churchyard	Rev. K. L.	250	—	250	$\frac{250}{745}$	50 0 0	5 0 0	45 0 0	—	—
School	M. N. (Trustee)	75	—	75	$\frac{75}{745}$	15 0 0	—	—	—	15 0 0
		750		745		149 0 0				

Description of Premises, access to which is obtained from the Street, &c.	Names of Owners or Reputed Owners	Sum, or Proportion of Expenses, to be charged on such Premises.							
Cottage, No. 1, Back Lane	O. P.	$\frac{1}{11}$th of £163 18*s.* 0*d.* (*i.e.*, £14 18*s.* 0*d.*) in equal shares.	4 19 4	—	—	—	4 19 4
,, No. 2 ,,	O. P.		4 19 4	—	—	—	4 19 4
,, No. 3 ,,	Q. R.		4 19 4	—	—	—	4 19 4
			163 18 0	15 10 0	45 0 0	—	103 8 0

Contribution from local authority	£10 0 0
Apportionment on premises as above	103 8 0
Amount to be borne by authority under s. 16	45 0 0
Estimated expenses	£158 8 0

Approved this day of 190 .

By order of the Council,

(*Signed*) Clerk.

10.

Resolution approving Specifications, etc.

"That the specification of the works proposed to be done in levelling [*or, as the case may be*], [that part of] Street [*or* Terrace] [lying between, *specifying its termini*] (*the street, or part of a street must be indicated with sufficient clearness to enable persons interested to recognise it*), within the [contributory place of in the] sanitary district of the council, and the plans, sections, estimate, and provisional apportionment, relating to such works, now submitted by the surveyor, be and the same are hereby approved."

11.

Notice of Resolution of Approval (for Service on Owners).

Urban [*or* Rural] Sanitary District of .

Private Street Works Act, 1892.

NOTICE

is hereby given that the Council of , being the sanitary authority for the above-named district, did, on the day of 190 , in accordance with the provisions of the above-mentioned Act, pass the following resolution, viz., [*see the preceding Form*].

And notice is further given that for a period of one month from the day of 190 [copies (certified by the surveyor) of] the specification, plans, sections, estimate, and provisional apportionment, referred to in the above resolution, will be kept deposited at the offices of the council, and will be open to inspection at all reasonable times.

Dated the day of 190 .

By order of the Council,

To X. Y., or other the owner of the premises known as .

(*Signed*) C. D., Clerk, of [*Address.*]

12.

Notice of Objections to Provisional Apportionment.

To the Council of , being the sanitary authority for the Urban [*or* Rural] District of .

In the matter of the Private Street Works Act, 1892, and in the matter of certain works proposed to be executed thereunder

APPENDIX B.

in Street in accordance with your resolution dated the day of 190 .

I beg to give you notice that I, the undersigned, being the owner of certain premises described as in the provisional apportionment, and therein shown as liable to be charged with part of the expenses of the above-mentioned works, object to your proposals in the matter on the following grounds, or some one or more of them, viz., [*set out clearly and in detail the objections relied on, as to which see p.* 69].

Dated the day of 190 .

(*Signed*) X. Y.,
of [*Address*].

13.

Notice of Hearing of Objections to Provisional Apportionment.

Urban [*or* Rural] Sanitary District of .

Private Street Works Act, 1892.

NOTICE.

Whereas we, the Urban [*or* Rural] District Council [*or as the case may be*] of , being the sanitary authority for the above-named district, have resolved with respect to [that part of] the street known as Street [*or* Terrace] [lying between, *specifying its termini*] (*describe the street, or part of a street, as in the resolution*) within the said district to do certain private street works;

And whereas certain objections to our proposals have been lodged by owners of premises shown in the provisional apportionment as liable to be charged with part of the expenses of executing such works;

Now therefore we do hereby give notice that the court of summary jurisdiction acting in and for have, upon our application in that behalf, appointed the hour of in the noon of the day of 190 , at the Court house in , for determining the matter of all objections made as in the Act mentioned.

Dated the day of 190 .

By order of the Council,

(*Signed*) C. D.,
Clerk.

To .

Final Apportionment.

P.S.

Urban Sanitary District of
[Rural Sanitary District of , Contributory Place of .]

Private Street Works Act, 1892.

Final Apportionment of ascertained expenses of Private Street Works executed in Street, , in pursuance of a resolution of the Council of , dated the day of , 190 .

Estimated expenses (including commission under s. 9 (2)	£46	6	0	Total ascertained expenses (including commission)	£51	9	3
To be contributed by local authority	5	0	0	To be contributed by local authority	5	0	0
Amount provisionally apportioned	£41	6	0	To be finally apportioned	£46	9	3

Description of Premises.	Owners or Reputed Owners.	Amount provisionally apportioned.	Proportionate Share.	Gross Final Apportionment.	To be apportioned under s. 22 on other Premises.	Additional Apportionment under s. 22.	To be borne by Authority under s. 16.	Net Amount finally apportioned on respective Premises.
		£ s. d.		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Shop, No. 1	A. B.	17 10 0	350/826	19 13 9	—	4 10 0	—	24 3 9
„ No. 2	C. D.	11 16 0	236/826	13 5 6	—	3 10 0	—	16 15 6
Railway Line	X. Rail. Co.	8 0 0	176/826	9 0 0	9 0 0	—	—	—
Church	Rev. E. F.	4 0 0	80/826	4 10 0	—	1 0 0	5 10 0	—
		41 6 0		46 9 3	9 0 0	9 0 0	5 10 0	40 19 3

L

Contribution from local authority	£5	0	0
Apportioned on premises as above	40	19	3
Amount to be borne by authority under s. 16	5	10	0
Total ascertained expenses	£51	9	3

Dated the day of , 190 .

(*Signed*)

Surveyor to the Authority.

15.

Notice of Final Apportionment.

Urban [*or* Rural] Sanitary District of .

Private Street Works Act, 1892.

NOTICE

is hereby given that, the Private Street Works undertaken by the Council of , as the sanitary authority for the above-named district, in [that part of] Street [lying between, *etc.*] having been completed, the surveyor has, in pursuance of the provisions of the above-mentioned Act, made a final apportionment of the ascertained expenses of such works, and has apportioned the sum of £ upon the premises known as No. 1, Street, [*or as the case may be*].

Dated, *etc.*

By order of the Council,

(*Signed*) C. D., Clerk,
of [*Address*].

To X.Y., or other the owner of the premises known as No. 1, Street.

16.

Notice of Objections to Final Apportionment.

To the Council of , being the Sanitary Authority for the Urban [*or* Rural] District of .

In the matter of the Private Street Works Act, 1892, and in the matter of certain works executed by you thereunder in Street.

I beg to give you notice that I the undersigned, being the owner of certain premises affected by the final apportionment of the expenses of such works, and therein described as , object to such final apportionment on some one or more of the following grounds, viz., [*set out clearly the objections relied on, as to which see p.* 80].

Dated, *etc.*

(*Signed*) X. Y.,
of [*Address*].

17.

Notice of Hearing.

[*This can be framed from No.* 13.]

18.

Declaration of Authority under S. 19.

Urban [*or* Rural] Sanitary District of .

Private Street Works Act, 1892.

NOTICE.

Whereas [that part of] the street known as Street [*or* Terrace] [lying between, *specifying its termini*] (*describe the street, or part of a street, as clearly as possible*), within the above-named district, being a [part of a] street within the meaning of the above-mentioned Act, has been [*here specify the particular private street work, or works, which has, or have, been executed*];

And whereas we, the Urban [*or* Rural] District Council [*or as the case may be*] of being the sanitary authority for the said district, are of opinion that the [said part of the] said street ought to become a highway repairable by the inhabitants at large;

Now therefore we do hereby declare the [said part of the] said street to be a highway repairable by the inhabitants at large.

Dated the day of 190 .

By order of the Council,

(*Signed*) C. D., Clerk.

19.

Application to Authority under S. 20.

To the Urban [*or* Rural] District Council [*or as the case may be*] of .

Whereas the street known as Street [*or* Terrace, *or as the case may be*], within your district, is a street within the meaning of the Private Street Works Act, 1892, and is sewered, levelled, paved, metalled, flagged, channelled, and made good, now we, the undersigned, forming the greater part in value of the owners of the houses and land in such street, hereby request you to declare such street to be a highway repairable by the inhabitants at large.

Dated the day of 190 .

(*Signed*) E. F., of [*Address*].

G. H., of [*Address*].

20.

Declaration of Authority under S. 20.

Urban [*or* Rural] Sanitary District of

Private Street Works Act, 1892.

NOTICE.

Whereas the street known as Street [*or* Terrace, *or as the case may be*], within the above-named district, is a street within the meaning of the above-mentioned Act, and is sewered, levelled, paved, metalled, flagged, channelled and made good to our satisfaction;

And whereas the greater part in value of the owners of the houses and land in such street have made application in writing, dated the day of 190 , requesting us to declare the said street to be a highway repairable by the inhabitants at large;

Now therefore we, the Urban [*or* Rural] District Council of , being the sanitary authority for the above-named district, in compliance with such application do hereby declare the said street to be a highway repairable by the inhabitants at large.

Dated the day of 190 .

By order of the Council,

(*Signed*) C. D., Clerk.

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